

2-2-2016

# Visser v. Auto Alley, LLC Clerk's Record v. 3 Dckt. 43432

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/  
idaho\\_supreme\\_court\\_record\\_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

---

## Recommended Citation

"Visser v. Auto Alley, LLC Clerk's Record v. 3 Dckt. 43432" (2016). *Idaho Supreme Court Records & Briefs, All*. 6256.  
[https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs/6256](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/6256)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs, All by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

Vol.

3 5

IN THE  
SUPREME COURT  
OF THE  
STATE OF IDAHO

LAW CLERK

S.C. # 43432-2015  
Bonner # CV-2013-1045

**DOUGLAS VISSER,**  
*Plaintiff / Respondent*  
vs.

**AUTO ALLEY, LLC., CALVIN VISSER and  
VICKI VISSER,**  
*Defendant / Appellants*

CLERK'S RECORD ON APPEAL

*Appealed from the District Court of the First Judicial District  
of the State of Idaho, in and for the County of Bonner.*

Brent Featherston,  
Attorney at Law  
*Attorney for Respondent*

Toby McLaughlin,  
Attorney at Law  
*Attorney for Appellant*

VOLUME III

43432

FILED - COPY
MAR 03 2016
Supreme Court _____ Court of Appeals _____
Entered on ATS by _____

IN THE SUPREME COURT OF THE  
STATE OF IDAHO

DOUGLAS VISSER,

Plaintiff-Respondent,

v.

AUTO ALLEY, LLC., CALVIN VISSER and  
VICKI VISSER,

Defendant-Appellants,

---

Appeal from the First Judicial District, Bonner  
County, Idaho

HONORABLE BARBARA A. BUCHANAN,  
presiding,

Brent C. Featherston, Attorney at Law  
113 S. Second Avenue, Sandpoint, Idaho 83864

Toby McLaughlin, Attorney at Law  
414 Church Street, Ste 203, Sandpoint, Idaho 83864

Douglas Visser vs. Auto Alley, LLC, Calvin Visser, Vicki Visser

Date	Code	User		Judge
6/25/2013	NCOC	KRAMES	New Case Filed - Other Claims	Barbara A. Buchanan
	APER	KRAMES	Plaintiff: Visser, Douglas Appearance Brent Featherston	Barbara A. Buchanan
		KRAMES	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Featherston, Brent (attorney for Visser, Douglas) Receipt number: 0492649 Dated: 6/25/2013 Amount: \$96.00 (Check) For: Visser, Douglas (plaintiff)	Barbara A. Buchanan
	COMP	HENDRICKSO	Complaint Filed	Barbara A. Buchanan
	SMIS	HENDRICKSO	Summons Issued - Vicki Visser original to file	Barbara A. Buchanan
	SMIS	HENDRICKSO	Summons Issued - Calvin Visser original to file	Barbara A. Buchanan
	SMIS	HENDRICKSO	Summons Issued - Auto Alley, LLC original to file	Barbara A. Buchanan
	MOTN	HENDRICKSO	Motion for Preliminary Injunction/Temporary Restraining Order	Barbara A. Buchanan
	APPL	HENDRICKSO	Application for Prejudgment Attachment and order to Show Cause/Temporary Restraining Order	Barbara A. Buchanan
	AFFD	HENDRICKSO	Affidavit of Douglas Visser In Support of Temporary Restraining Order/Preliminary Injunction	Barbara A. Buchanan
7/3/2013	ORDR	HENDRICKSO	Order to Show Cause/Temporary Restraining Order	Barbara A. Buchanan
	HRSC	HENDRICKSO	Hearing Scheduled (Order to Show Cause 07/17/2013 02:00 PM) Order Show Cause/Temporary Restraining Order	Barbara A. Buchanan
7/8/2013	BNDC	HUMRICH	Bond Posted - Cash (Receipt 493189 Dated 7/8/2013 for 10000.00)	Barbara A. Buchanan
7/15/2013	AFSV	HENDRICKSO	Affidavit Of Service - Calvin Visser served 07-09-13	Barbara A. Buchanan
	AFSV	HENDRICKSO	Affidavit Of Service - Vicki Visser served 07-09-13	Barbara A. Buchanan
	AFSV	HENDRICKSO	Affidavit Of Service - Calvin Visser - registered Agent for Auto Alley, LLC served 7-9-13	Barbara A. Buchanan
7/17/2013		KRAMES	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Margaret Williams, Attorney at Law Receipt number: 0493694 Dated: 7/17/2013 Amount: \$66.00 (Check) For: Auto Alley, Llc, (defendant), Visser, Calvin (defendant) and Visser, Vicki (defendant)	Barbara A. Buchanan
	NOAP	CMOORE	Notice of Appearance (Margaret Williams and Brandie Rouse for Defendants)	Barbara A. Buchanan
	APER	CMOORE	Defendant: Auto Alley, Llc, Appearance Margaret Williams	Barbara A. Buchanan



Douglas Visser vs. Auto Alley, LLC, Calvin Visser, Vicki Visser

Date	Code	User	Judge
7/17/2013	APER	CMOORE	Defendant: Auto Alley, Llc, Appearance Brandie J Rouse Barbara A. Buchanan
	APER	HENDRICKSO	Defendant: Visser, Calvin Appearance Margaret Williams Barbara A. Buchanan
	APER	HENDRICKSO	Defendant: Visser, Calvin Appearance Brandie J Rouse Barbara A. Buchanan
	APER	HENDRICKSO	Defendant: Visser, Vicki Appearance Margaret Williams Barbara A. Buchanan
	APER	HENDRICKSO	Defendant: Visser, Vicki Appearance Brandie J Rouse Barbara A. Buchanan
	CONT	SECK	Continued (Order to Show Cause 07/24/2013 09:00 AM) Temporary Restraining Order - reset by BAB from bench Barbara A. Buchanan
		SECK	Notice Of Hearing Barbara A. Buchanan
	CMIN	SECK	Court Minutes Hearing type: Order to Show Cause Hearing date: 7/17/2013 Time: 2:16 pm Courtroom: Court reporter: Sheryl Engler Minutes Clerk: Melissa Seck Tape Number: ct 1 Brent Featherston Brandie Rouse Barbara A. Buchanan
7/24/2013	HRVC	OPPELT	Hearing result for Order to Show Cause scheduled on 07/24/2013 09:00 AM: Hearing Vacated Temporary Restraining Order - reset by BAB from bench - Per Brent Featherston Barbara A. Buchanan
7/25/2013	STIP	OPPELT	Stipulation for Continuation of Temporary Restraining Order/Preliminary Injunction and Prejudgment Writ of Attachment Barbara A. Buchanan
7/29/2013	ORDR	HENDRICKSO	Order Continuing Temporary Restraining Order/Preliminary Injunction and Prejudgment Writ of Attachment Barbara A. Buchanan
8/13/2013	BNDE	HENDRICKSO	Cash Bond Exonerated (Amount 10,000.00) Barbara A. Buchanan
8/19/2013	MISC	HENDRICKSO	Acknowledgment Pursuant to Rule 16(k)(7) IRCP Regarding Case Status/Mediation *Mediation resulted in a conditional resolution of the matter* Barbara A. Buchanan
10/10/2013	HRSC	OPPELT	Hearing Scheduled (Status 11/06/2013 11:15 AM) Re: Mediated Settlement Barbara A. Buchanan
		OPPELT	Notice Of Hearing Barbara A. Buchanan

Date: 12/23/2015

## First Judicial District Court - Bonner County

User: KBOWERS

Time: 1:00 PM

ROA Report

Page 3 of 13

Case: CV-2013-0001045 Current Judge: Barbara A. Buchanan

Douglas Visser vs. Auto Alley, LLC, etal.

Douglas Visser vs. Auto Alley, LLC, Calvin Visser, Vicki Visser

Date	Code	User	Judge
11/6/2013	CMIN	AYERLE	Court Minutes Hearing type: Status Re Mediated Settlement Hearing date: 11/6/2013 Time: 11:19 am Courtroom: Court reporter: Val Larson Minutes Clerk: Susan Ayerle Tape Number: 1 Brent Featherston for PI Brandi Rouse telephonically for Def Vickie Visser Barbara A. Buchanan
	DCHH	OPPELT	Hearing result for Status scheduled on 11/06/2013 11:15 AM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: Re: Mediated Settlement (Brandie Rouse by telephone) - Less Than 100 Pages Barbara A. Buchanan
1/15/2014	HRSC	OPPELT	Hearing Scheduled (Status 02/19/2014 11:15 AM) Regarding Settlement Barbara A. Buchanan
		OPPELT	Notice Of Hearing Barbara A. Buchanan
1/21/2014	MISC	HENDRICKSO	Letter to Judge Buchanan re: Settlement Agreement Barbara A. Buchanan
2/18/2014	LETT	HENDRICKSO	Letter from Attorney Featherston Barbara A. Buchanan
2/19/2014	HRVC	CMOORE	Hearing result for Status scheduled Regarding Settlement on 02/19/2014 11:15 AM: Hearing Vacated - Judgment entered Barbara A. Buchanan
	JDMT	HENDRICKSO	Judgment (12 pgs) Barbara A. Buchanan
	CDIS	HENDRICKSO	Civil Disposition entered for: Auto Alley, Llc,, Defendant; Visser, Calvin, Defendant; Visser, Vicki, Defendant; Visser, Douglas, Plaintiff. Filing date: 2/19/2014 Barbara A. Buchanan
	STAT	HENDRICKSO	STATUS CHANGED: closed Barbara A. Buchanan
2/24/2014		HUMRICH	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Visser, Douglas Receipt number: 0002908 Dated: 2/24/2014 Amount: \$12.00 (Check) Barbara A. Buchanan
		HUMRICH	Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Visser, Douglas Receipt number: 0002908 Dated: 2/24/2014 Amount: \$1.00 (Check) Barbara A. Buchanan
4/3/2014	MISC	HENDRICKSO	Letter from Attorney Featherston to Court Barbara A. Buchanan
	MOTN	HENDRICKSO	Motion for Writ of Possession and Judgment of Quiet Title Barbara A. Buchanan
	AFFD	HENDRICKSO	Affidavit of Counsel in Support of Plaintiff's Motion for Writ of Possession and Judgment of Quiet Title Barbara A. Buchanan

Douglas Visser vs. Auto Alley, LLC, Calvin Visser, Vicki Visser

Date	Code	User		Judge
4/3/2014	AFFD	HENDRICKSO	Affidavit of Douglas Visser in Support of Plaintiff's Motion for Writ of Possession and Judgment of Quiet Title	Barbara A. Buchanan
4/8/2014	NOFH	OPPELT	Notice Of Hearing Re: Motion for Writ of Possession and Judgment of Quiet Title	Barbara A. Buchanan
	HRSC	OPPELT	Hearing Scheduled (Motion 04/23/2014 11:30 AM) for Writ of Possession and Judgment of Quiet Title	Barbara A. Buchanan
	STAT	OPPELT	STATUS CHANGED: Closed pending clerk action	Barbara A. Buchanan
4/21/2014	OBJC	CMOORE	Objection to Plaintiff's Motion for Writ of Possession and Judgment of Quiet Title	Barbara A. Buchanan
4/23/2014	CMIN	OPPELT	Court Minutes Hearing type: Motion for Writ of Possession & Judgment of Quiet Title Hearing date: 4/23/2014 Time: 11:32 am Courtroom: Court reporter: Non Minutes Clerk: Linda Oppelt Tape Number: 1+ Brent Featherston Margaret Williams	Barbara A. Buchanan
	EXHB	OPPELT	Exhibit List	Barbara A. Buchanan
	DCHH	OPPELT	Hearing result for Motion scheduled on 04/23/2014 11:30 AM: District Court Hearing Held Court Reporter: None Number of Transcript Pages for this hearing estimated: for Writ of Possession and Judgment of Quiet Title - Less Than 100 Pages	Barbara A. Buchanan
	DENY	OPPELT	Hearing result for Motion scheduled on 04/23/2014 11:30 AM: Motion Denied	Barbara A. Buchanan
4/25/2014	MEMO	HENDRICKSO	Memorandum of Fees and Costs	Barbara A. Buchanan
5/5/2014	JDMT	HENDRICKSO	Judgment re: Writ of Possession and Quiet Title (3 pgs)	Barbara A. Buchanan
	CDIS	HENDRICKSO	Civil Disposition entered for: Auto Alley, LLC, Defendant; Visser, Calvin, Defendant; Visser, Vicki, Defendant; Visser, Douglas, Plaintiff. Filing date: 5/5/2014	Barbara A. Buchanan
5/7/2014	MOTN	CMOORE	Motion Re: Plaintiff's Interference with Defendants' Ability to Comply with the Judgment and Notice of Hearing	Barbara A. Buchanan
	HRSC	CMOORE	Hearing Scheduled (Motion 05/21/2014 03:30 PM) Re: Plaintiffs Interference with Defendants' Ability to Comply with the Judgment	Barbara A. Buchanan
5/14/2014	NOSV	HENDRICKSO	Notice of Service re: updated Phase I Environmental Site Assessment	Barbara A. Buchanan

Douglas Visser vs. Auto Alley, LLC, Calvin Visser, Vicki Visser

Date	Code	User	Judge
5/21/2014	CMIN	AYERLE	Court Minutes Hearing type: Mtn Re PI Interference with Def Ability to Comply Hearing date: 5/21/2014 Time: 3:46 pm Courtroom: Court reporter: Val Larson Minutes Clerk: Susan Ayerle Tape Number: 1 Brent Featherston for PI Margaret Williams for Def Barbara A. Buchanan
	DCHH	OPPELT	Hearing result for Motion scheduled on 05/21/2014 03:30 PM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: Re: Plaintiffs Interference with Defendants' Ability to Comply with the Judgment - Less Than 100 Pages Barbara A. Buchanan
	DENY	OPPELT	Hearing result for Motion scheduled on 05/21/2014 03:30 PM: Motion Denied Re: Plaintiffs Interference with Defendants' Ability to Comply with the Judgment Barbara A. Buchanan
	STAT	OPPELT	STATUS CHANGED: closed Barbara A. Buchanan
5/22/2014	EXHB	OPPELT	Exhibit List Barbara A. Buchanan
5/23/2014	ORDR	HENDRICKSO	Order Denying Motion re: Plaintiff's Interference with Defendants' Ability to Comply with the Judgment Barbara A. Buchanan
3/24/2015	NOTC	HENDRICKSO	Notice of Association of Counsel - Attorney M. Williams Barbara A. Buchanan
3/26/2015	MOTN	HENDRICKSO	Motion for Contempt Barbara A. Buchanan
	AFFD	HENDRICKSO	Affidavit of Vicki Visser in Support of Motion for Contempt Barbara A. Buchanan
3/27/2015	NOFH	CMOORE	Amended Notice of Hearing Barbara A. Buchanan
	MOTN	HENDRICKSO	Motion for Judgment of Quiet Title and Writ of Possession and Notice of Hearing Barbara A. Buchanan
	HRSC	HENDRICKSO	Hearing Scheduled (Motion 04/23/2014 11:30 AM) Plaintiff's Motion for Writ of Possession and Judgment of Quiet Title (***INCORRECT YEAR GIVEN ON NOTICE OF HEARING*****) Barbara A. Buchanan
	AFFD	HENDRICKSO	Affidavit of Douglas Visser in Support of Plaintiff's Motion for Writ of Possession and Judgment of Quiet Title Barbara A. Buchanan
	NOHG	HENDRICKSO	Amended Notice of Hearing re: Plaintiff's Judgment of Quiet Title and Motion for Writ of Possession Barbara A. Buchanan

Douglas Visser vs. Auto Alley, LLC, Calvin Visser, Vicki Visser

Date	Code	User		Judge
3/27/2015	CONT	HENDRICKSO	Continued (Motion 04/10/2015 01:30 PM) Plaintiff's Motion for Writ of Possession and Judgment of Quiet Title	Barbara A. Buchanan
3/30/2015	NOHG	HENDRICKSO	Notice of Hearing and Advisement of Rights	Barbara A. Buchanan
	HRSC	HENDRICKSO	Hearing Scheduled (Motion 05/06/2015 10:00 AM) Defendant's Motion	Barbara A. Buchanan
	MOTN	HENDRICKSO	Motion, Memorandum and Affidavit to Vacate and Reset the Plaintiff's Hearing on a Motion for Judgment of Quiet Title and Writ of Possession	Barbara A. Buchanan
4/6/2015	ORDR	HUMRICH	Order to Vacate and Reset the Plaintiff's Hearing on a Motion for Judgment of Quiet Title and Writ of Possession & Order to Vacate and Reset Defendants' Hearing on Motion for Contempt	Barbara A. Buchanan
	CONT	HUMRICH	Hearing result for Motion scheduled on 04/10/2015 01:30 PM: Continued Plaintiff's Motion for Writ of Possession and Judgment of Quiet Title - Continued to May 20, 2015 @ 1:30 pm	Barbara A. Buchanan
	CONT	HUMRICH	Hearing result for Motion scheduled on 05/06/2015 10:00 AM: Continued Defendant's Motion - Continued to May 20, 2015 @ 1:30 pm	Barbara A. Buchanan
	HRSC	HUMRICH	Hearing Scheduled (Motion 05/20/2015 01:30 PM) Plaintiff's Motion for Writ of Possession and Judgment of Quiet Title and Defendants' Motion for Contempt	Barbara A. Buchanan
	HRSC	HUMRICH	Hearing Scheduled (Motion 05/20/2015 01:30 PM) Defendants' Motion for Contempt	Barbara A. Buchanan
	NOFH	BOWERS	Second Amended Notice of Hearing	Barbara A. Buchanan
5/13/2015		HUMRICH	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Berg & McLaughlin Receipt number: 0006906 Dated: 5/13/2015 Amount: \$136.00 (Check) For: Visser, Vicki (defendant)	Barbara A. Buchanan
	MEMO	HENDRICKSO	Defendants' Memorandum in Opposition to Plaintiff's Motion Judgment of Quiet Title and Writ of Possession	Barbara A. Buchanan
	AFFD	HENDRICKSO	Affidavit of Joe Lapham in Response to Plaintiff's Motion to Quiet Title	Barbara A. Buchanan
	AFFD	HENDRICKSO	Affidavit of Vicki Visser in Response to Plaintiff's Motion to Quiet Title	Barbara A. Buchanan
	AFFD	HENDRICKSO	Affidavit of Counsel in Support of Plaintiff's Motion for Writ of Possession and Judgment of Quiet Title	Barbara A. Buchanan
	REPL	HENDRICKSO	Plaintiff's Reply Memorandum in Support of Motion for Judgment of Quiet Title and Writ of Possession and in Support of Motion to Dismiss Defendants; Motion for Contempt	Barbara A. Buchanan

Date: 12/23/2015

## First Judicial District Court - Bonner County

User: KBOWERS

Time: 12:00 PM

ROA Report

Page 7 of 13

Case: CV-2013-0001045 Current Judge: Barbara A. Buchanan

Douglas Visser vs. Auto Alley, LLC, etal.

Douglas Visser vs. Auto Alley, LLC, Calvin Visser, Vicki Visser

Date	Code	User		Judge
5/19/2015	MOTN	HENDRICKSO	Motion to Strike Affidavit of Joe Lapham in Responses to Plaintiff's Motion to Quiet Title	Barbara A. Buchanan
	SUBP	HENDRICKSO	Amended Subpoena Duces Tecum (Margaret Williams, Esq.) for Production or Inseption of Documents, Electronically Stored Information, or Tangible Things	Barbara A. Buchanan
	SUBP	HENDRICKSO	Amended Subpoena Duces Tecum (Panhandle Escrow Services, Inc) for Production or Inseption of Documents, Electronically Stored Information, or Tangible Things	Barbara A. Buchanan
	SUBP	HENDRICKSO	Amended Subpoena Duces Tecum (Vicki Visser) for Production or Inseption of Documents, Electronically Stored Information, or Tangible Things	Barbara A. Buchanan
	SUBP	HENDRICKSO	Amended Subpoena Duces Tecum (Bonner County Treasurer) for Production or Inseption of Documents, Electronically Stored Information, or Tangible Things	Barbara A. Buchanan
	SUBP	HENDRICKSO	Amended Subpoena Duces Tecum (Loan Star Mortgage) for Production or Inseption of Documents, Electronically Stored Information, or Tangible Things	Barbara A. Buchanan
5/20/2015	HRSC	PHILLIPS	Hearing Scheduled (Motion 05/28/2015 09:00 AM) Plaintiff's Motion for Writ of Possession and Judgment of Quiet Title	Barbara A. Buchanan
	HRSC	PHILLIPS	Hearing Scheduled (Evidentiary 05/28/2015 09:00 AM) on Contempt	Barbara A. Buchanan
		PHILLIPS	Notice Of Hearing	Barbara A. Buchanan
	CMIN	PHILLIPS	Court Minutes Hearing type: Motion for Quiet Title and Writ; Motn for Contemp Hearing date: 5/20/2015 Time: 1:35 pm Courtroom: Court reporter: Minutes Clerk: Ann Phillips Tape Number: 1 Brent Featherston Douglas Visser Toby McLaughlin Vicki Visser, Calvin Visser	Barbara A. Buchanan
	DCHH	OPPELT	Hearing result for Motion scheduled on 05/20/2015 01:30 PM: District Court Hearing Held Court Reporter: Julie Mccaughan Number of Transcript Pages for this hearing estimated: Defendants' Motion for Contempt - Less Than 100 Pages	Barbara A. Buchanan

Douglas Visser vs. Auto Alley, LLC, Calvin Visser, Vicki Visser

Date	Code	User	Judge
5/20/2015	DENT	OPPELT	Hearing result for Motion scheduled on 05/20/2015 01:30 PM: Defendants' Motion for Contempt - Denial Entered
	DCHH	OPPELT	Hearing result for Motion scheduled on 05/20/2015 01:30 PM: District Court Hearing Held Court Reporter: Julie Mccaughan Number of Transcript Pages for this hearing estimated: Plaintiff's Motion for Writ of Possession and Judgment of Quiet Title - Less Than 100 Pages (Hearing Continued to 5-28-15 at 2:30 pm)
5/22/2015	SUBP	HENDRICKSO	Second Amended Subpoena Duces Tecum for Production or Inspection of Documents, Electronically Stored Information, or Tangible Things (re: Panhandle Escrow Services, Inc)
	SUBP	HENDRICKSO	Second Amended Subpoena (re: Calvin Visser c/o D. Toby McLaughlin)
	SUBP	HENDRICKSO	Second Amended Subpoena (re: Margaret Williams, Esq.)
	SUBP	HENDRICKSO	Second Amended Subpoena (re: Vicki Visser c/o D. Toby McLaughlin)
	SUBP	HENDRICKSO	Second Amended Subpoena Duces Tecum for Production or Inspection of Documents, Electronically Stored Information, or Tangible Things
	SUBP	HENDRICKSO	Second Amended Subpoena Duces Tecum for Production or Inspection of Documents, Electronically Stored Information, or Tangible Things (re: Loan Star Mortgage Attn: Jeff Eich)
	SUBP	HENDRICKSO	Second Amended Subpoena Duces Tecum for Production or Inspection of Documents, Electronically Stored Information, or Tangible Things
	SUBP	HENDRICKSO	Subpoena issued re: Rex A. Finney, Esp Finney, Finney, & Finney, PA



Date: 12/23/2015

First Judicial District Court - Bonner County

User: KBOWERS

Time: 12:00 PM

ROA Report

Page 9 of 13

Case: CV-2013-0001045 Current Judge: Barbara A. Buchanan

Douglas Visser vs. Auto Alley, LLC, etal.

Douglas Visser vs. Auto Alley, LLC, Calvin Visser, Vicki Visser

Date	Code	User	Judge
5/28/2015	CMIN	OPPELT	Court Minutes Hearing type: Motion for Writ of Possession/Evidentiary Hearing date: 5/28/2015 Time: 9:03 am Courtroom: Court reporter: Val Larson Minutes Clerk: Linda Oppelt Tape Number: 3+ Toby McLaughlin Brent Featherston Vicki Visser Doug Visser Barbara A. Buchanan
	DCHH	OPPELT	Hearing result for Evidentiary scheduled on 05/28/2015 09:00 AM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: on Contempt - More Than 100 Pages Barbara A. Buchanan
	DCHH	OPPELT	Hearing result for Motion scheduled on 05/28/2015 09:00 AM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: Plaintiff's Motion for Writ of Possession and Judgment of Quiet Title - More Than 100 Pages Barbara A. Buchanan
	EXHB	OPPELT	Exhibit List Barbara A. Buchanan
	HRSC	OPPELT	Hearing Scheduled (Evidentiary 05/29/2015 09:00 AM) Barbara A. Buchanan
	HRSC	OPPELT	Hearing Scheduled (Motion 05/29/2015 09:00 AM) for Writ of Possession and Judgment of Quiet Title Barbara A. Buchanan
		OPPELT	Notice Of Hearing Barbara A. Buchanan
	CMIN	OPPELT	Court Minutes Hearing type: Motion for Writ of Possession/Evidentiary Hearing date: 5/29/2015 Time: 9:11 am Courtroom: Court reporter: Val Larson Minutes Clerk: Linda Oppelt Tape Number: 1+ Brent Featherston Toby McLaughlin Vicki Visser Doug Visser Calvin Visser Barbara A. Buchanan
	EXHB	OPPELT	Exhibit List Barbara A. Buchanan

Date: 12/23/2015

## First Judicial District Court - Bonner County

User: KBOWERS

Time: 12:00 PM

ROA Report

Page 10 of 13

Case: CV-2013-0001045 Current Judge: Barbara A. Buchanan

Douglas Visser vs. Auto Alley, LLC, etal.

Douglas Visser vs. Auto Alley, LLC, Calvin Visser, Vicki Visser

Date	Code	User	Judge
5/29/2015	DCHH	OPPELT	Hearing result for Motion scheduled on 05/29/2015 09:00 AM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: for Writ of Possession and Judgment of Quiet Title - More Than 100 Pages
	DCHH	OPPELT	Hearing result for Evidentiary scheduled on 05/29/2015 09:00 AM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: More Than 100 Pages
6/12/2015	BREF	HENDRICKSO	Plaintiff's Post Trial Brief
	BREF	HENDRICKSO	Defendants' Post-Trial Brief
6/19/2015	MISC	HENDRICKSO	Lis Pendens Issued ( copy to file )
6/24/2015	BREF	OPPELT	Plaintiff's Post Trial Reply Brief
6/25/2015	REPL	HENDRICKSO	Defendants' Reply to Plaintiff's Post-Trial Brief
7/6/2015	MEMO	HENDRICKSO	Memorandum Decision and Order
7/15/2015	OBJC	HENDRICKSO	Defendant's Objection to Writ of Possession
	LETT	HENDRICKSO	Letter from Attorney Featherston re: Defendant's Objection to Writ of Possession
7/16/2015	ORDR	HENDRICKSO	Order Releasing Lis Pendens
	WRIT	HENDRICKSO	Writ of Possession Issued
7/17/2015	HRSC	HUMRICH	Hearing Scheduled (Motion 08/05/2015 03:30 PM) Def's Motion for Reconsideration
	NOHG	HENDRICKSO	Notice Of Hearing re: Motion for Reconsideration
7/20/2015		HENDRICKSO	Miscellaneous Payment: Writs Of Execution Paid by: Featherston Law Receipt number: 0010400 Dated: 7/20/2015 Amount: \$2.00 (Check)
	MOTN	HENDRICKSO	Defendants' Motion for Reconsideration and for Stay Of Execution of Judgment
	MEMO	HENDRICKSO	Memorandum in Support of Defendants' Motion for Reconsideration and For Stay of Execution of Judgment
	NOHG	HENDRICKSO	Notice of Hearing re: Motion for Reconsideration and Motion for Stay of Execution of Judgment
	HRSC	HENDRICKSO	Hearing Scheduled (Motion 08/05/2015 03:30 PM) Defendant's Motion for Reconsideration
	HRSC	HENDRICKSO	Hearing Scheduled (Motion 08/05/2015 03:30 PM) Defendant's Motion for Stay of Execution of Judgment
	MEMO	HENDRICKSO	Second Memorandum of Fees and Costs

Date: 12/23/2015

## First Judicial District Court - Bonner County

User: KBOWERS

Time: 12:00 PM

ROA Report

Page 11 of 13

Case: CV-2013-0001045 Current Judge: Barbara A. Buchanan

Douglas Visser vs. Auto Alley, LLC, etal.

Douglas Visser vs. Auto Alley, LLC, Calvin Visser, Vicki Visser

Date	Code	User		Judge
7/29/2015	APPL	HENDRICKSO	Plaintiff's Application for Prejudgment Attachment and Order to Show Cause/Temporary Restraining Order	Barbara A. Buchanan
	MOTN	HENDRICKSO	Motin to Allow Attorney's Fees, Motion to shorten Time and Notice of Hearing	Barbara A. Buchanan
	HRSC	HENDRICKSO	Hearing Scheduled (Motion 08/05/2015 03:30 PM) Plaintiff's Motion to Allow Attorney's Fees	Barbara A. Buchanan
	HRSC	HENDRICKSO	Hearing Scheduled (Motion 08/05/2015 03:30 PM) Plaintiff's Motion to Shorten Time	Barbara A. Buchanan
	RSPN	HENDRICKSO	Plaintiff's Response to Defendants' Motion for Reconsideration and For Stay of Judgment	Barbara A. Buchanan
7/31/2015	OSC	HENDRICKSO	Order to Show Cause/Temporary Restraining Order re: Writ of Attachment	Barbara A. Buchanan
	HRSC	HENDRICKSO	Hearing Scheduled (Order to Show Cause 08/05/2015 03:30 PM)	Barbara A. Buchanan
8/5/2015	DCHH	OPPELT	Hearing result for Order to Show Cause scheduled on 08/05/2015 03:30 PM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: More Than 100 Pages	Barbara A. Buchanan
	GRNT	OPPELT	Hearing result for Order to Show Cause scheduled on 08/05/2015 03:30 PM: Motion Granted	Barbara A. Buchanan
	GRNT	OPPELT	Hearing result for Motion scheduled on 08/05/2015 03:30 PM: Motion Granted Plaintiff's Motion to Shorten Time	Barbara A. Buchanan
	GRNT	OPPELT	Hearing result for Motion scheduled on 08/05/2015 03:30 PM: Motion Granted Plaintiff's Motion to Allow Attorney's Fees	Barbara A. Buchanan
	DENY	OPPELT	Hearing result for Motion scheduled on 08/05/2015 03:30 PM: Motion Denied Defendant's Motion for Stay of Execution of Judgment	Barbara A. Buchanan
	DENY	OPPELT	Hearing result for Motion scheduled on 08/05/2015 03:30 PM: Motion Denied Defendant's Motion for Reconsideration	Barbara A. Buchanan
	AFSV	HENDRICKSO	Affidavit of Service re: Plaintiff's Application for Prejudgment Attachment and Order to Show Case/Temporary Restraining Order	Barbara A. Buchanan
	JDMT	HENDRICKSO	Judgment re: Attorney's Fees and Costs	Barbara A. Buchanan
	CDIS	HENDRICKSO	Civil Disposition entered for: Visser, Douglas, Plaintiff; Auto Alley, LLC,, Defendant; Visser, Calvin, Defendant; Visser, Vicki, Defendant. Filing date: 8/5/2015	Barbara A. Buchanan

Date: 12/23/2015

## First Judicial District Court - Bonner County

User: KBOWERS

Time: 12:00 PM

ROA Report

Page 12 of 13

Case: CV-2013-0001045 Current Judge: Barbara A. Buchanan

Douglas Visser vs. Auto Alley, LLC, etal.

Douglas Visser vs. Auto Alley, LLC, Calvin Visser, Vicki Visser

Date	Code	User	Judge
8/6/2015	CMIN	OPPELT	Court Minutes Hearing type: Various Motions Hearing date: 8/5/2015 Time: 3:31 pm Courtroom: Court reporter: Val Larson Minutes Clerk: Linda Oppelt Tape Number: 1 Brent Featherston Toby McLaughlin Vicki Visser Barbara A. Buchanan
		HUMRICH	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Berg & McLaughlin, CHTD Receipt number: 0011322 Dated: 8/6/2015 Amount: \$129.00 (Check) For: Auto Alley, LLC, (defendant), Visser, Calvin (defendant) and Visser, Vicki (defendant) Barbara A. Buchanan
	BNDC	HUMRICH	Bond Posted - Cash (Receipt 11323 Dated 8/6/2015 for 100.00) Barbara A. Buchanan
	BNDC	HUMRICH	Bond Posted - Cash (Receipt 11324 Dated 8/6/2015 for 200.00) Barbara A. Buchanan
	APSC	HUMRICH	Appealed To The Supreme Court Barbara A. Buchanan
	NOTA	HUMRICH	NOTICE OF APPEAL Barbara A. Buchanan
8/7/2015	ORDR	HENDRICKSO	Order re: Plaintiff's Application for Prejudgment Attachment and Order to Show Cause Barbara A. Buchanan
	MEMO	HENDRICKSO	Memorandum Decision and Order Denying Defendants' Motion for Reconsideration and for Stay Execution of Judgment Barbara A. Buchanan
	JDMT	HENDRICKSO	Judgment re: Judgment of Quiet Title in favor of Plaintiff Barbara A. Buchanan
	CDIS	HENDRICKSO	Civil Disposition entered for: Auto Alley, LLC,, Defendant; Visser, Calvin, Defendant; Visser, Vicki, Defendant; Visser, Douglas, Plaintiff. Filing date: 8/7/2015 Barbara A. Buchanan
	MOTN	HENDRICKSO	Motion for a Stay of Execution on Appeal Barbara A. Buchanan
8/10/2015	ORDN	HENDRICKSO	Order Denying Stay of Evecution During Pendency of Appeal Barbara A. Buchanan
8/11/2015	MISC	HUMRICH	Docket #43432-2015 - Due to ISC 10/09/2015 Barbara A. Buchanan
8/13/2015		BOWERS	Miscellaneous Payment: For Comparing And Conforming A Prepared Record, Per Page Paid by: Featherston Law Receipt number: 0011674 Dated: 8/13/2015 Amount: \$1.50 (Check) Barbara A. Buchanan
		BOWERS	Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Featherston Law Receipt number: 0011674 Dated: 8/13/2015 Amount: \$1.00 (Check) Barbara A. Buchanan
8/14/2015	MEMO	HENDRICKSO	Third Memorandum of Fees and Costs Barbara A. Buchanan

Date: 12/23/2015

## First Judicial District Court - Bonner County

User: KBOWERS

Time: 1:00 PM

ROA Report

Page 13 of 13

Case: CV-2013-0001045 Current Judge: Barbara A. Buchanan

Douglas Visser vs. Auto Alley, LLC, etal.

Douglas Visser vs. Auto Alley, LLC, Calvin Visser, Vicki Visser

Date	Code	User		Judge
8/18/2015	SCDF	HUMRICH	Supreme Court Document Filed- Appellant's application for a Stay of Proceedings During the Pendency of Appeal	Barbara A. Buchanan
8/19/2015	APPL	HUMRICH	Ex Parte Application for A Temporary Stay of Execution Pursuant to IAR 13.1	Idaho Supreme Court
8/20/2015	SCDF	HUMRICH	Supreme Court Document Filed- Order Denying application for Temporary Stay	Idaho Supreme Court
8/26/2015		ROSS	Miscellaneous Payment: Writs Of Execution Paid by: Featherston Law Firm Receipt number: 0012339 Dated: 8/26/2015 Amount: \$2.00 (Check)	Barbara A. Buchanan
	WRIT	HENDRICKSO	Writ of Execution Issued - copy to file	Barbara A. Buchanan
	WRIT	HENDRICKSO	Writ of Execution Issued - Copy to file	Barbara A. Buchanan
	WRIT	HENDRICKSO	Writ of Execution Issued - Original to file - in correct amount (attorney to re file)	Barbara A. Buchanan
8/28/2015	MEMO	HENDRICKSO	Memorandum to Court File re: Corrections to Writ Issued	Barbara A. Buchanan
	WRRT	HENDRICKSO	Writ of Execution - Returned to File	Barbara A. Buchanan
	WRIT	HENDRICKSO	Writ of Execution Issued - Copy to file	Barbara A. Buchanan
9/8/2015	CCOA	HUMRICH	Clerk's Certificate Of Appeal	Barbara A. Buchanan
	MISC	HUMRICH	Reset Due Dates - Clerk's Record and Transcripts due ISC 11/17/2015	Barbara A. Buchanan
9/11/2015	SCDF	HUMRICH	Supreme Court Document Filed- Order Denying Application for Stay of Proceedings During the Pendency of Appeal	Idaho Supreme Court
9/16/2015	ORDR	OPPELT	Order Re: Attorney's Fees and Costs	Barbara A. Buchanan
	JDMT	OPPELT	Second Judgment Re: Attorney's Fees and Costs	Barbara A. Buchanan
	CDIS	BOWERS	Civil Disposition entered for: Auto Alley, LLC,, Defendant; Visser, Calvin, Defendant; Visser, Vicki, Defendant; Visser, Douglas, Plaintiff. Filing date: 9/16/2015	Barbara A. Buchanan
10/8/2015	SHRT	KBOWERS	Sheriff's Return on Writ, Served	Barbara A. Buchanan
	WRRT	KBOWERS	Writ Returned- Writ of Execution	Barbara A. Buchanan
10/21/2015	SCDF	HUMRICH	Supreme Court Document Filed- Order Granting court Reporter's Motion for Extension of Time	Idaho Supreme Court
11/19/2015	SCDF	KBOWERS	Supreme Court Document Filed- Order Granting Court Reporter's Motion for Extension of Time	Idaho Supreme Court
	MISC	KBOWERS	Reset Due Dates- Transcripts and Records to ISC 1/19/2016	Barbara A. Buchanan

TOBY McLAUGHLIN, ISB No. 7405  
Berg & McLaughlin, Chtd.  
414 Church Street, Ste 203  
Sandpoint, ID 83864  
Telephone: (208)263-4748  
Facsimile: (208)263-7557

*Attorneys for Defendants*

IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

NO. CV-2013-1045

DOUGLAS VISSER, a married man as to his  
sole and separate property,

Plaintiff

vs.

AUTO ALLEY, LLC, an Idaho limited liability  
company, CALVIN VISSER and VICKI  
VISSER, as individuals in their capacity as  
Members and/or Managers of Auto Alley, LLC,

Defendant.

DEFENDANTS' REPLY TO PLAINTIFF'S  
POST-TRIAL BRIEF

I. ARGUMENT

**A. The Plaintiff is Seeking an Inequitable Forfeiture which the Court Should Refuse to Allow.**

As set forth in detail in the Defendant's Post-Trial Brief, the Court has the discretion to refuse to allow the Plaintiff the windfall of the forfeiture he is seeking. In his Post-Trial Brief, Plaintiff Douglas Visser contends that "forfeiture does not apply to [the] provisions of the Judgment." (*P's Post-Trial Brief*, p. 20). This is flatly wrong, and, not surprisingly, Mr. Visser fails to cite to any authority in support of this statement.

The Mediated Settlement Agreement ("MSA") and its subsequent rendition as a stipulated Judgment, constitute an enforceable contract. *Guzman v. Piercy*, 155 Idaho 928, 936,

1 318 P.3d 918, 926 (2014) (“A stipulation is a contract and its enforceability is determined by  
2 contract principles.”); *Jeff D. v. Andrus*, 899 F.2d 753, 759 (9th Cir. 1989) (“An agreement to  
3 settle a legal dispute is a contract and its enforceability is governed by familiar principles of  
4 contract law.”). Mr. Visser admits as much in his Post Trial Brief, in which he states: “A  
5 settlement agreement is a contract that is enforceable.” (*P’s Post Trial Brief*, p. 20). The  
6 stipulated Judgment is essentially a real estate installment contract whereby Vicki Visser, as the  
7 buyer, must fulfil certain obligations, including the payment of debts owing by Mr. Visser (i.e.  
8 real estate taxes owing by Mr. Visser, payment of half of the Lapham mortgage or the splitting of  
9 the debt, payment of half of the subdivision costs, etc.) before title to the property is to be  
10 conveyed to Vicki Visser. There is no substantive difference between this type of agreement and  
11 the traditional real estate installment purchase contract, in which the buyer must make all  
12 payments before the seller is obligated to convey title to the property to the buyer. Such  
13 contracts always condition conveyance of title on the payment of the entire purchase price, and  
14 allow forfeiture in the event that payment is not made. Idaho law is clear, however, that such  
15 provisions are not enforceable where they are arbitrary and bear no reasonable relation to the  
16 anticipated damages. Clearly, the Court has the discretion to make such a determination in this  
17 case.  
18

19       The Plaintiff cites to *Ellis v. Butterfield*, 98 Idaho 644, 570 P.2d 1334 (1977), which Mr.  
20 Visser contends requires this Court to enforce the Judgment despite its drastic consequences to  
21 the Defendants. *Ellis*, however, is clearly distinguishable from the present case. *Ellis* involved a  
22 dispute over an installment land sale contract in which the Defendant defaulted. The District  
23 Court declared the land sale contract terminated, and allowed the vendors to retain all payments  
24 made under the contract. On appeal, the Supreme Court upheld the District Court’s decision, but  
25



1 in so doing, found that "at no time in these proceedings have [the purchasers] argued that the  
2 foregoing amounts are disproportionate to the damages sustained by [the sellers] or that the  
3 [sellers] are unjustly enriched by retention of payments and recovery of the property." *Id.* at 647,  
4 570 P.2d at 1337.

5 In the instant case, the Defendants have established that they have invested more than  
6 \$230,000, as well as countless hours of labor, improving the subject properties and paying debts  
7 owed by the Plaintiff. Mr. Visser's equity in these properties has greatly increased due to these  
8 efforts, and it would be unjust for Mr. Visser to simply retain all of these benefits, especially  
9 where he actively interfered with the Defendant's ability to make the final payment on Ms.  
10 Visser's half of the mortgage. *Ellis*, therefore, is clearly distinguishable.

12 Moreover, when citing to *Ellis* in his Post Trial Brief, Mr. Visser fails to include the most  
13 relevant portion of that decision, which causes the quote cited in his brief to be misleading. The  
14 quote included by Mr. Visser in his brief is as follows, which is actually a portion of the *Ellis*  
15 decision which is quoting:

16 It is the lawful privilege of the parties to a contract for the sale of  
17 real property to make time of performance of the essence of their  
18 agreement. It is also their privilege to agree in advance upon the  
19 damages to be recompensed in case of breach. The courts, both at  
20 law and in equity, must respect the provisions of a contract  
21 lawfully agreed to. *Hinsch v. Mothorn*, 44 Idaho 539, 258 P. 540;  
22 *Coe v. Bennett*, 46 Idaho 62, 266 P. 413; *Koch v. Glenn*, 53 Idaho  
761, 27 P.2d 870; *Williamson v. Wilson*, 56 Idaho 198, 52 P.2d  
138; *Williamson v. Smith*, 74 Idaho 79, 256 P.2d 784; *Scogings v.*  
*Love*, 79 Idaho 179, 312 P.2d 570. ***But, where the facts make the***  
***damage agreed to an unconscionable penalty, equity will***  
***intercede to grant relief. Graves v. Cupic, supra.***

23 *Id.*, at 648, quoting *Howard v. Bar Bell Land & Cattle Co.*, 81 Idaho 189, 197, 340 P.2d 103, 107  
24 (1959) (*emphasis added*). Mr. Visser omits the last sentence of the above quote in his Post Trial  
25

1 Brief, which completely changes the context of the rule cited therein. (*P's Post Trial Brief*, p.  
2 20).

3 *Ellis* is also distinguishable from the present case on the grounds that the Judgment in this  
4 case does not contain a clause indicating that time is of the essence. As the first sentence of the  
5 above quote indicates, "It is the lawful privilege of the parties to a contract for the sale of real  
6 property ***to make time of performance of the essence of their agreement.***" *Ellis*, 98 Idaho at  
7 648, 570 P.2d at 1338 (*emphasis added*). There is no such provision in either the Mediated  
8 Settlement Agreement or in the Judgment. As explained by Justice Bistline in his dissenting  
9 opinion in *Ellis*:

11 The majority opinion agrees that in a case such as this where "the  
12 purchaser is several years into the contract," the remedy of  
13 forfeiture may be "unduly harsh." Nevertheless, according to the  
14 majority, the Court's hands are tied ***because the parties stipulated***  
15 ***that "time is of the essence"*** and the purchaser was 6 days late in  
tendering back payments and nearly two months late in tendering  
the full purchase price plus costs, including attorney fees. The  
hands of a court of equity are never tied.

16 It is a truism that while parties to a land sale contract may stipulate  
17 that time be of the essence, the fact remains that[,] "Just because  
18 the parties have declared that time shall be of the essence does not  
19 necessarily make it so. The parties cannot by use of labels convert  
an apple into an orange. It is the business of courts to look through  
form to substance." *Rothenberg v. Follman*, 19 Mich.App. 383,  
172 N.W.2d 845, 850 (1969).

20 *Ellis v. Butterfield*, 98 Idaho 644, 654, 570 P.2d 1334, 1344 (1977) (*emphasis added*). In his  
21 dissenting opinion, Justice Bistline rails against the strict enforcement of time is of the essence  
22 clauses, and objects to the majority's enforcement of the clause in the *Ellis* decision. In the  
23 instance case, however, the parties did not include a time is of the essence clause in the  
24 Judgment. Consequently, *Ellis* is not controlling.

1 In *Thomas v. Klein*, 99 Idaho 105, 577 P.2d 1153 (1978), a decision issued less than a  
2 year after *Ellis*, the Idaho Supreme Court clarified the District Court's obligation when dealing  
3 with these types of issues – the Court must determine whether the contractual forfeiture  
4 provisions are reasonable and equitable. In *Thomas*, the Supreme Court found that strict  
5 forfeiture of a contract by a vendor would amount to a penalty and held that equity required the  
6 “contract be foreclosed and the property sold by judicial sale.” *Id.*, at 107. Justice McFadden, in  
7 his concurring opinion in *Thomas*, explains:

8  
9 This decision is in conformity with our earlier opinion in *Ellis v.*  
10 *Butterfield*, 98 Idaho 644, 570 P.2d 1334 (1977), *aff'd on reh.*, 98  
11 Idaho 663, 572 P.2d 509 (1978), although the remedy here decreed  
12 is different. In *Ellis v. Butterfield*, *supra*, we enforced the parties'  
13 contractual forfeiture provision because we found substantial  
14 evidence on appeal to support the trial court's finding that retention  
15 of payments made under the contract as liquidated damages was  
16 not unreasonable or inequitable. However, in the instant case the  
17 trial court found that the forfeiture provision was, in effect, an  
18 unenforceable penalty. The trial court thus held that the vendees  
19 were not bound by the remedy provided by contract, and thus we  
20 conclude that judicial sale of the property is the most equitable  
21 remedy in this case. The judgment of the trial court is reversed and  
22 the cause remanded for judicial sale of the property. The parties  
23 shall be allowed to participate in the bidding of the property at the  
24 sale, which shall be free and clear of any lien or claim of the  
25 parties.

18 *Thomas*, 99 Idaho at 107, 577 P.2d at 1155.

19  
20 These cases establish that the Court must decide whether the damage to Defendants in  
21 having to forfeit all of their efforts is unreasonable and inequitable when compared to the  
22 damages that Mr. Visser claims to have incurred as a consequence of the alleged failure to fulfil  
23 all of the obligations under the Judgment. Clearly, they are not. Consequently, the Defendants  
24 submit that the District Court should refuse Mr. Visser the windfall that he is seeking on the  
25 grounds that it constitutes an inequitable forfeiture.

1       **B. The Judgment Contemplates that the Parties would Split the Lapham Mortgage**  
2       **Upon the Successful Subdivision of the Property.**

3       Douglas Visser claims that the Judgment relieves him of any obligation to convey Lot 2  
4       to Vicki Visser until the Defendants paid, in full, their entire half of the Lapham Judgment. (*P's*  
5       *Post Trial Brief*, p. 3). This assertion, however, is directly contradicted by the terms of the  
6       Judgment itself. The specific language in the Judgment is found at page 4, paragraph A(5), and  
7       states, in relevant part:

8               The parties ***shall (upon subdivision of the property as described***  
9               ***above) to thereupon divide the debt between Plaintiff and***  
10              ***Defendants using the respective Parcels 1 and 2 of the platted***  
11              ***property as collateral for each party's respective share of the***  
              ***Lapham obligation*** and thereby releasing and extinguishing any  
              joint liability of Plaintiff Douglas Visser and Defendant, Vicki  
              Visser on the Lapham debt.

12       (Ex. 17) (*emphasis added*).

13       It is undisputed that the subdivision was completed on July 2, 2014. In order for this to be  
14       accomplished, the Defendants paid \$45,418.77 in back taxes, and \$2,000 in subdivision costs.  
15       Vicki Visser subsequently arranged with Joe Lapham for the debt to be split precisely as  
16       contemplated in this provision of the Judgment. Counsel for the Defendants met with Plaintiff's  
17       counsel and explained that they were prepared to split the debt.

18       Mr. Visser, however, refused to allow Lot 2 to be pledged as collateral for the new loan,  
19       first demanding new conditions to which the Defendants were not obligated, and then  
20       unilaterally refinancing the debt, and in so doing, pledging Lot 2 as collateral for a \$270,000  
21       debt. Consequently, Mr. Visser directly and intentionally prevented the Defendants from paying  
22       the last \$30,000 owing to Joe Lapham for Vicki Visser's portion of the mortgage, despite the  
23       clear language in paragraph A(5) of the Judgment which requires that the debt be split upon the  
24       subdivision of the property.  
25

1 In an effort to explain why he refused to allow the Lapham Mortgage to be split upon the  
2 subdivision of the property, Mr. Visser contends, “[f]rom the outset, a portion of the Mediated  
3 Settlement Agreement was not capable of performance because Lapham, communicating  
4 through counsel, Rex Finney on August 29, 2013, refused to ‘split’ the debt between Lots 1 and  
5 2.” (*P’s Post Trial Brief*, p. 3). This argument is misleading, because the obligation to split the  
6 debt did not, and could not, arise until the property was subdivided, which did not occur until  
7 July 2, 2014. Without two separate lots having yet been legally formed, Lot 2 *could not* be  
8 pledged as collateral to secure Vicki’s portion of the mortgage. In fact, paragraph A(5) of the  
9 Judgment by its express terms is only triggered “upon subdivision of the property,” which did  
10 not occur until more than six months after the amendment of the Mortgage. Consequently, Mr.  
11 Visser’s contention that Mr. Lapham prevented the debt from being split at the time of the  
12 amendment of the mortgage in December, 2013 is erroneous, and is intended to mislead the  
13 Court.  
14

15 The undisputed testimony at the evidentiary hearing established that once the subdivision  
16 process was complete in July, 2014, Mr. Lapham was willing to split the debt, exactly as  
17 contemplated by the Judgment. Counsel for both parties and Mr. Lapham met expressly for the  
18 purposes of identifying which party owed what portion of the mortgage, so that it could be split.  
19 Douglas Visser, however, refused to allow this to occur, and should be held in contempt for  
20 doing so.  
21

### 22 **C. The Alleged Breaches of the Judgment are Not Sufficient to Justify Forfeiture.**

23 Douglas Visser claims that forfeiture is justified because “the Judgment contains six (6)  
24 references to the consequences if Defendants fail to perform.” (*P’s Post Trial Brief*, p. 9). While  
25 this may be true, mere repetition does not somehow strip this Court of its duties to examine the

1 contract under equitable principals. Mr. Visser is asking this Court to require the Defendants to  
2 forfeit all of their effort and money that they have invested into this property, as well as all of  
3 their personal property, which amounts to literally everything the Defendants own. Thus, he is  
4 seeking a forfeiture. Had this language been included 100 times in the Judgment, the remedy  
5 being sought by the Plaintiff would still be forfeiture.

6 In fact, Mr. Featherston drastically changed the terms of the Mediated Settlement  
7 Agreement in this regard when he drafted the Judgment. According to the Mediated Settlement  
8 Agreement, the Plaintiff's right to forfeiture was only to be triggered in the event that the  
9 Defendants failed to make the \$3,500 monthly payments that were due in the months of October,  
10 2013 through March, 2014. Paragraph F of the Mediated Settlement Agreement states:

12 Beginning October 1, 2013, Defendants shall be entitled to remain  
13 on the premises to conduct their commercial business upon the  
14 condition they pay the sum of \$3,500 per month through the Trust  
15 account of Brent. C. Featherston, to be applied as follows: \$2,500  
16 to the LAPHAM debt and \$1,000 toward Bonner County taxes.  
17 Defendants shall continue to make \$3,500 per month payments  
18 from October 1, 2013 through March 31, 2014, due on or before  
19 the first day of each month. **Should Defendants fail to timely  
20 make any payment in full when due as stated herein, Plaintiff  
21 shall have an immediate right to writ of possession of the  
22 premises.**

23 (Ex. E) (*emphasis added*). The Defendants made all of these payments.

24 This is the only reference in the Mediated Settlement Agreement to a right by the  
25 Plaintiff to obtain a writ of possession, and it is limited to a failure to provide a payment required  
by paragraph F therein. Yet, when the Mediated Settlement Agreement was converted to a  
stipulated Judgment by Mr. Featherston, this provision was somehow changed to allow forfeiture  
in the event that "Defendants fail to perform any obligation" in the entire Judgment, and

1 referenced six times, as pointed out by the Plaintiff. (Ex. 17, p. 6-7, ¶ F; *P's Post Trial Brief*, p.  
2 9).

3 Moreover, many of the alleged breaches asserted by the Plaintiff are wholly immaterial.  
4 For instance, Mr. Visser points out that the Defendants paid all but \$1,000 of the delinquent  
5 taxes. Ms. Visser believed that she had already paid the \$1,000 to Mr. Featherston's trust  
6 account. While this may or may not have been true, it is undisputed that Vicki Visser  
7 subsequently paid the \$1,000 as well, which allowed the subdivision process to be completed.  
8 Yet, the Plaintiff asserts that this is sufficient to justify a complete forfeiture, and goes so far as  
9 to accuse Vicki Visser of perjury. This outrageous contention is indicative of the weakness of  
10 Mr. Visser's claims.

11  
12 Mr. Visser also appears to be contending that the Defendants violated the Judgment by  
13 failing to pay real estate taxes beyond the 2014 tax year. Yet, there is no requirement that they  
14 do so. With regard to real estate taxes, the Judgment at paragraph A(2) states:

15 Defendants paid, on or about January 27, 2014 all current and  
16 delinquent real estate property taxes on the entire real property  
17 described in Exhibit "A" and as per the records of the Bonner  
18 County Tax Assessor, which is a necessary condition to allow  
subdivision of the property as set forth above. Said tax parcel is  
identified by Bonner County Parcel No. RPP0000110452A.

19 (Ex. 17).

20 This provision does not impose upon the Defendants any obligation to pay additional real  
21 property taxes. Rather, it is an acknowledgment that the Defendants have satisfied their duties  
22 under paragraph D of the Mediated Settlement Agreement which states:

23 Defendants agree that as a condition of this settlement they shall, on  
24 or before December 31, 2013, pay all current and delinquent ad  
25 valorem real estate property taxes on the entire parcel pursuant to  
the records of the Bonner County Tax Assessor, which is necessary  
to permit subdividing of the property as set forth herein above.



1 (Ex. E).

2  
3 There is simply no support for Mr. Visser's claim that the Defendants are in default  
4 because Mr. Visser had to pay a share of his own taxes in 2014.

5 Mr. Visser also claims that not all of the monies obtained from crushing were deposited  
6 into Mr. Featherston's trust account, despite the undisputed fact that these monies (aside from  
7 business expenses, which are authorized under the Judgment) were paid to reduce the Lampham  
8 mortgage, albeit on one occasion the payment was made directly to the escrow company. (*P's*  
9 *Post Trial Brief*, p. 6). Similarly, Mr. Visser claims that he is entitled to the remedy of forfeiture  
10 because a few personal possessions were left in one of the buildings on Lot 1, and because the  
11 Defendants utilize a very small portion of a road across a corner of Lot 1 to access Lot 2. *Id.* The  
12 Court, however, is required to weigh the damage caused to Mr. Visser by these alleged breaches  
13 against the cost to the Defendants if forfeiture is allowed. Mr. Visser submitted no evidence that  
14 these activities have caused any damage to him. Consequently, forfeiture would act as an  
15 inequitable penalty.  
16

17 **D. The Plaintiff's Reliance on *Merrill v. Gibson* is Misplaced.**

18 In his Post Trial Brief, Douglas Visser argues that this case is controlled by *Merrill v.*  
19 *Gibson*, 142 Idaho 692, 132 P.3d 449 (App. 2005), which he claims is "strikingly similar" to the  
20 facts of this case. (*P's Post Trial Brief*, p. 10). This is incorrect.

21 In *Merrill*, the plaintiff had brought a quiet title action seeking to eject a long time  
22 commercial tenant from his property. The District Court granted the relief, which the Supreme  
23 Court upheld. As with *Merrill*, this case also originated when Mr. Visser filed a quiet title action  
24 seeking to evict his son and ex-wife, with whom Mr. Visser had for years been operating a  
25 business, from his property. That, however, is where the similarities between this case and

1 *Merrill* end. Unlike in *Merrill*, the underlying dispute in this case was settled through mediation,  
2 with Douglas Visser agreeing to transfer title to a portion of the real property at issue. No such  
3 agreement was at issue in *Merrell*. Moreover, in the instant case, the Defendants have  
4 substantially complied with the Court's Judgments, with Mr. Visser actively interring with their  
5 ability to do so. The *Merrill* decision contains no discussion whatsoever as to the relevant issues  
6 here, particularly as to the forfeiture claims. That decision is, therefore, completely irrelevant to  
7 this dispute.

8  
9 Nevertheless, Mr. Visser claims that he "has been more than patient with the  
10 Defendants." (*P's Post Trial Brief*, p. 11). Yet, the Plaintiff completely ignores his role in  
11 matter, not only in refusing to allow Vicki Visser to refinance her portion of the debt, but also  
12 Doug Visser's failure to repay his share of the Lapham Mortgage. In fact, unlike the Defendants,  
13 Mr. Visser made no real effort pay his half of the mortgage by the time that the loan matured.  
14 At that time, he owed approximately \$180,000.00, whereas, Ms. Visser only owed just over  
15 \$30,000.00, having made lump sum payments of \$50,000 and \$80,0000, as well as the monthly  
16 payments set forth in the Mediated Settlement Agreement. Thus, the fact that Mr. Visser was  
17 facing foreclosure cannot be laid at the feet of Ms. Visser. Rather, it is entirely the consequence  
18 of Mr. Visser's failure to pay his half of the debt.

19  
20 Moreover, Mr. Visser's assertion that he refinanced the Lot because he was facing  
21 foreclosure is completely unsubstantiated. While Mr. Lapham's counsel did send a letter  
22 indicating that he was not willing to provide an extension of the maturity date, no evidence was  
23 admitted that foreclosure proceedings, which take at least four months, had begun. Mr. Lapham  
24 further testified that he was willing to extend the loan, but wanted it done commensurate with the  
25 splitting of the loan for the benefit of Vicki Visser, who he describes as having outstanding

1 character. In fact, Mr. Visser made no effort to obtain a loan secured by only Lot 1, which is  
2 evidence that he had no intent to convey Lot 2 to Ms. Visser regardless of her ability to split the  
3 debt.

4 Mr. Visser goes so far as to accuse Ms. Visser of conspiring with Mr. Lapham of  
5 engaging in some ill-conceived scheme to ensure that Mr. Lapham ends up with all of this  
6 property. (*P's Post-Trial Brief*, p. 15). This reliance on conspiracy theories is indicative of the  
7 weakness of Mr. Visser's claims. There is absolutely no evidence in the record to support Mr.  
8 Visser's claim that Mr. Lapham was "prepared to fund that loan only after he had foreclosed on  
9 Douglas and obtained title to Lot 1," thereby enabling him to dictate the terms to Ms. Visser  
10 "since she was clearly unable to obtain financing elsewhere to meet her current obligation." (*Id.*).  
11 In fact, all of the witnesses testified to the contrary. Mr. Lapham stated in plain terms that he  
12 was prepared to loan \$40,000 to Ms. Visser based on her upstanding character, but was requiring  
13 that she pledge Lot 2 as collateral for the loan. Mr. Visser further admitted that he refused to  
14 allow this until Ms. Visser built him a new road and provided him a "clean bill of health" for his  
15 property. Neither are requirements to which the Defendants are obligated.  
16

17 **E. The Defendants are Not Obligated to Cure All Issues with Lot 1 that May or May**  
18 **Not Exist.**

19 In his Post Trial Brief, Douglas Visser asserts that the Judgment provides "an all-  
20 encompassing liability to the Defendants . . . for the damage they have caused prior to mediation  
21 and . . . during the move out." (*P's Post Trial Brief*, p. 13). The language of the Judgment  
22 simply does not support this claim. Rather, the Defendants' duties under the Judgment are  
23 expressly limited. The Judgment states at paragraph 6(C):

24 Upon Defendants vacating the real property described above,  
25 possession of *the property shall be restored to the Plaintiff in a  
condition of repair at least equivalent to, or in as good or better*

1 **condition as existed on or about August 15, 2013, normal wear**  
2 **and tear acceptable** and free of all Defendants' personal property,  
3 possessions, and debris related to Defendants' commercial  
4 business and Defendants shall be liable for any clean up and  
5 remediation necessary to accomplish restoration of the premises **as**  
6 **provided herein**. Defendants shall be liable for any damage to the  
premises and shall take measures in vacating the premises to avoid  
causing damage to the property, or any part thereof, including mud  
ruts, etc.

7 (Judgment, p. 5, ¶ C) (*emphasis added*).

8 The Plaintiff's interpretation of this language renders meaningless the words "as existed  
9 on or about August 15, 2013, normal wear and tear accepted," and is, therefore, an unreasonable  
10 interpretation. *Star Phoenix Min. Co. v. Hecla Min. Co.*, 130 Idaho 223, 233, 939 P.2d 542, 552  
11 (1997) ("In construing a contract, an interpretation should be avoided that would render  
12 meaningless any particular provision in the contract."). This provision simply cannot reasonably  
13 be read, as the Plaintiff contends to require the Defendants to cure any perceived defect that Mr.  
14 Visser claims might exist as a condition of receiving title to Lot 2. Moreover, because the  
15 Judgment was drafted by Mr. Featherston, where there is more than one interpretation, the Court  
16 must construe the contract against the Plaintiff. *Guzman v. Piercy*, 155 Idaho 928, 936, 318 P.3d  
17 918, 926 (2014).

18 The same is true with regard to the Defendants duties regarding environmental issues.  
19 Mr. Visser contends that the Defendants "are responsible for the [environmental] cleanup, [and]  
20 to provide proof that the restoration has occurred." (*P's Post Trial Brief*, p. 13). This argument  
21 conveniently ignores the actual language of the Judgment, which states at Paragraph 6(D):  
22

23 By March 31, 2014, Defendants at their expense shall commission  
24 a Phase I Environmental Study by a qualified expert or company **to**  
25 **determine the existence or lack of existence of any environmental**  
**hazards or contamination at a cost not to exceed \$5,000**, to insure  
compliance with the provisions in the preceding paragraph. The  
Phase I study shall be complete and delivered to Plaintiff by no

1 later than April 15, 2014. Further Defendant Vicki Visser, shall  
2 provide true and accurate copies to the Plaintiff's Counsel any and  
3 all environmental studies performed on the property, past or  
4 present.

(Ex. 17) (*emphasis added*).

5 Again, the Defendants' interpretation of an "unlimited" duty to remediate requires  
6 reading into the Judgment terms which are not included, and also renders meaningless the  
7 limitation of a cost of \$5,000.00. Surely the Defendants have a right to rely upon the Settlement  
8 Agreement that they signed, and if such an Agreement is to impose an unlimited financial burden  
9 upon them, then the Agreement must indicate so explicitly. It does not.

10 Mr. Visser further contends that "it appears that the Defendants believe they are not held  
11 liable for any damages that might have been caused during their occupancy from 2005 through  
12 August 15, 2013." (*P's Post Trial Brief*, p. 7). This is correct. The parties reached a mediated  
13 agreement as to any and all claims against them. They expressly released one another from all  
14 claims except those duties identified in the Mediated Settlement Agreement and subsequent  
15 Judgment:  
16

17 The parties mutually agree and acknowledge that this settlement  
18 constitutes a full, final and complete release of any and all claims  
19 or causes of action against one another or any other party named in  
20 the Complaint or Counter Complaint, if any, which was made part  
21 of the Complaint or Counter-Complaint, or could have been  
22 claimed in a Complaint or Counter Complaint against the named  
23 Defendant(s) or Counter-Defendant(s) as it relates to the  
24 underlying cause of action which forms the basis of this dispute.

(Ex. E, p. 4, ¶ O).

23 Nowhere in either the Mediated Settlement Agreement or the Judgment does the Plaintiff  
24 preserve claims against the Defendants for damages that occurred before August 15, 2013.  
25 Those claims, therefore, have been expressly waived.

1 The existence of a valid agreement of compromise and settlement  
2 is a complete defense to an action based upon the original claim.  
3 The agreement supersedes and extinguishes all pre-existing claims  
4 the parties intended to settle. In an action brought to enforce an  
5 agreement of compromise and settlement, made in good faith, the  
6 court will not inquire into the merits or validity of the original  
7 claim.

8 *Goodman v. Lothrop*, 143 Idaho 622, 625, 151 P.3d 818, 821 (2007) (citing *Wilson v. Bogert*, 81  
9 Idaho 535, 542, 347 P.2d 341, 345 (1959)) (internal quotations omitted).

10 **F. The Defendants Accounting of the Parties' Relative Share of the Lapham Mortgage**  
11 **is Flawed and Misleading.**

12 Mr. Visser contends that Vicki's portion of the Lapham debt as of December 31, 2014,  
13 was either \$34,470.96, or \$44,470.96, or 57,793.61 or \$57,993.61, depending upon how the  
14 payments are applied. (*P's Post Trial Brief*, pp. 5-6). None of these figures are correct.

15 Attorneys Williams and Finney both testified that the amount owing under the Lapham  
16 mortgage was an issue of dispute, for which the attorneys for Mr. Lahpham, Douglas Visser, and  
17 Vicki Visser all met and ultimately resolved. This is evidenced by the letter dated August 27,  
18 2014, from Douglas Visser's attorney to counsel for Defendants, in which he states:

19 *Margaret, when we discussed this on June 18th, we agreed that*  
20 *your client's share of the note was then \$109,864.72.* I understand  
21 that she made an \$80,000 payment in July directly into escrow, but  
22 the balance needs to be paid together with the nine percent (9%)  
23 interest that has accrued from June 18th until the \$80,000.00 was  
24 posted on July 16th, and nine percent (9%) interest accruing on the  
25 balance until Vicki pays that balance off.

(Ex. 4) (*emphasis added*).

Starting with the agreed balance of \$109,864.72 as of June 18<sup>th</sup>, 2014, it is a simple  
matter of calculating interest and accounting for the \$80,000 payment by the Defendants. Interest  
accrued on the \$109,864.72 at 9% per annum from June 18<sup>th</sup> to July 14<sup>th</sup> in the amount of  
\$704.34, resulting in a balance as of July 14<sup>th</sup>, 2014, of \$110,569.06. That balance must be

1 reduced by the \$80,000 payment, leaving a balance of \$30,569 as of July 14<sup>th</sup>, 2014. Interest then  
2 accrued on this new balance at 9% per annum from July 15<sup>th</sup> until December 31, at a rate of  
3 \$7.54 per day, for total interest through December 31, 2014 of an additional \$1,281.39, bringing  
4 the balance at the time of the refinance to \$31,850.45.

5       The ledgers provided by Panhandle Escrow are fraught with inconsistency and confusion.  
6 The Mediated Settlement Agreement required the Defendants to make \$3,500 monthly payments  
7 from October, 2013 through March, 2014, with \$2,500 of each payment to be applied to Vicki's  
8 portion of the Lapham debt. (Ex. E, ¶ F). The Defendants made all of these payments to the trust  
9 account of Brent Featherston, who subsequently paid the monies to Panhandle Escrow. (Ex. H).  
10 The Judgment, however, was not entered until February 19, of 2014, after the Defendants had  
11 already made many of the monthly payments. The Judgment, therefore, only indicates that the  
12 Defendants were obligated to make the monthly payments from January 31, 2014, through  
13 March 31, 2014, even though the payments had been made since October, 2013. (Ex. 17, ¶ 3). It  
14 appears, therefore, that the accounting provided by Panhandle Escrow neglects to take the  
15 October, November, and December, 2013, payments by the Defendants into account.

16       Douglas Visser further confuses the issue by claiming that he is entitled to credit against  
17 his share of the mortgage for payments made by the Defendants as if these were rental payments.  
18 There is nothing in the Judgment, however, that indicates that these payments are to be treated as  
19 rent, or otherwise applied as a credit to Doug Visser's share of the mortgage. Rather, the  
20 Judgment states the opposite, "[A]ny payments made by each party until such division and  
21 allocation of the debt [is] to be credited to the party making said payments." (Ex. 17, p. 4, ¶  
22 A(5) last sentence).



1 Mr. Visser next argues that he never received credit for two \$5,000 payments that he  
2 claims to have made toward his half of the Lapham obligation, and therefore, that Vicki's portion  
3 of the debt must be increased by \$10,000.00. This is completely nonsensical. If the escrow  
4 company failed to credit Doug for payments that he made, then the payoff of the loan should  
5 have been reduced, but in no case would this somehow increase Vicki's share of the debt. She is  
6 responsible only for her half of the debt, regardless of how much Doug pays toward his half.

7 These arguments confirm Mr. Finney's testimony that the Plaintiff is simply not good at  
8 math, and unable to accurately calculate what is owed. In any case, the Defendants respectfully  
9 submit that the evidence demonstrates that Vicki Visser's share of the Lahpham mortgage was  
10 \$31,850.45 as of December 31, 2014.

11  
12 **G. The Plaintiff Failed to Prove that his Alleged Damages are Reasonably Related to**  
13 **the Loss that the Defendants Will Suffer if Forfeiture is Allowed.**

14 Aside from the \$31,850.45 that Mr. Visser paid on Vicki's behalf without her knowledge,  
15 the only damages that Mr. Visser claims to have incurred were: (1) for alleged damages to one of  
16 the buildings from a forklift, for which Mr. Visser estimates the repair to cost \$2,500.00. (*P's*  
17 *Post Trial Brief*, p. 8); and (2) for an "inadequately repaired" parking lot which Mr. Visser  
18 contends without foundation this will cost \$8,000 to repair. (*Id.*, p. 9).

19 With regard to the alleged forklift damages, there is no evidence in the record  
20 establishing that this was caused by the Defendants during the move. Mr. Visser attempts to rely  
21 upon two pictures of the building, one with damage and one without. In the picture without  
22 damage, however, the portion of the metal panel that is damaged is hidden behind a truck bed.  
23 Therefore, it could have been damaged prior to the time the picture was taken, and the damage  
24 revealed only upon the removal of the truck bed.  
25

1           Moreover, there was absolutely no foundation laid to establish that Mr. Visser has any  
2 basis for asserting that the cost of repair is \$2,500 for the one metal sheet panel, and \$8,000 for  
3 the parking lot. "Although the owners of property are competent to testify as to the value of their  
4 property, the weight to be given their testimony depends on their background, knowledge and  
5 experience." *Simpson v. Johnson*, 100 Idaho 357, 362, 597 P.2d 600, 605 (1979); *see also*  
6 *Bancroft v. Smith*, 80 Idaho 63, 323 P.2d 879 (1958). While Mr. Visser might be competent to  
7 testify to the value of his property, there is no evidence that he has any qualification as to what it  
8 would cost to repair the metal siding of a building, or to repair a parking lot. In fact, he admitted  
9 to having no such experience. Simply because one owns property does not make him competent  
10 to estimate the cost to repair any particular part of it. Mr. Visser could have presented such  
11 testimony through a properly qualified expert, but failed to do so. Consequently, he has failed to  
12 meet his burden of proof as to these damages.

14           Moreover, his claim that the parking lot was damaged was impeached at trial by Calvin  
15 and Vicki Visser. Vicki testified that she spent \$31,800 in gravel, equipment rental, and leveling  
16 the property, including the parking lot. While Douglas Visser claims that the Defendants poured  
17 sand onto the driveway, he did not witness such an event. Calvin Visser, on the other hand,  
18 testified that he spread gravel over the driveway, and the sand to which Mr. Visser objects was  
19 just part of the dirty gravel that was delivered, and that he never poured sand onto the parking  
20 lot. Rather, he testified that the parking lot is in better condition now than it was before the  
21 Defendants moved from Lot 1. Unlike Douglas Visser, Calvin Visser has experience in building  
22 parking lots, as he built the one at issue in this case.

24           As to damages claimed for failing to fully remediate any environmental issues, Mr.  
25 Visser failed to present any evidence. On the contrary, Mr. Visser acknowledges that "it appears

1 that the cleanup may have occurred.” (*P’s Post Trial Brief*, p 8). Without evidence of any actual  
2 contamination or evidence of quantification of damages commensurate with what Mr. Visser will  
3 gain if the forfeiture is granted, he is not entitled to that remedy.

4 Even if we assume for the sake of argument that these damages are legitimate, which they  
5 are not, they still pale in comparison to what the Defendants will lose if the Plaintiff is granted  
6 the relief he is seeking. Clearly, this would cause an inequitable forfeiture that the Court should  
7 refuse to allow.  
8

## 9 10 II. CONCLUSION

11 For the reasons set forth above and in the Defendants’ Post Trial Brief, the Court should find  
12 the Plaintiff Douglas Visser in contempt for willfully violating the terms of the Judgment and  
13 unilaterally interfering with Defendant Vicki Visser’s right to obtain free and clear title to Lot 2,  
14 and order that either free and clear title to Lot 2 be provided, or Lot 1 sold so as to satisfy the  
15 current encumbrance. The Court should retain jurisdiction over these properties until so  
16 accomplished. The Defendants are also entitled to an award of legal costs and reasonable  
17 attorney’s fees.

18 DATED this <sup>26</sup>25 day of June, 2015.

19 BERG & McLAUGHLIN, CHTD.

20  
21 By: 

22 Toby McLaughlin  
23 Attorneys for the Defendant/Petitioner  
24  
25

CERTIFICATE OF SERVICE

On June 25, 2015, I caused copies of the foregoing document to be served by the following methods on the parties listed below as follows, which is the last known address for the listed party:

Margaret Williams, Esq.  
P.O. Box 283  
Ponderay, ID 83852

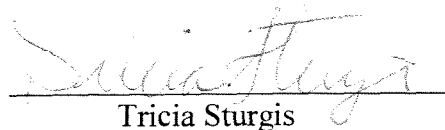
☐ By Hand Delivery  
☒ By U.S. Mail  
☐ By Overnight Mail  
☐ By Facsimile Transmission

*Attorney for the Defendants*

Brent C. Featherston  
FEATHERSTON LAW FIRM, CHTD.  
113 South Second Ave.  
Sandpoint, ID 83864

☐ By Hand Delivery  
☒ By U.S. Mail  
☐ By Overnight Mail  
☒ By Facsimile Transmission

*Attorneys for the Plaintiff/Respondent*

  
Tricia Sturgis

STATE OF IDAHO  
COUNTY OF BONNER  
CLERK OF DISTRICT COURT

2015 JUL -6 A 10:47

CLERK OF DISTRICT COURT

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNER**

**DOUGLAS VISSER, a married man as to his  
sole and separate property,**

**Plaintiff,**

**vs.**

**AUTO ALLEY, LLC, an Idaho limited  
liability company, CALVIN VISSER and  
VICKI VISSER, as individuals in their capacity  
as Members and/or Managers of Auto Alley,  
LLC,  
Defendants.**

**CASE NO. CV-2013-0001045**

**MEMORANDUM DECISION  
AND ORDER**

THIS MATTER came before the Court on May 20, 28 and 29, 2015, for an evidentiary hearing on Defendants' Motion for Contempt; and Plaintiff's Motion for Judgment of Quiet Title and Writ of Possession. Plaintiff Douglas Visser is represented by Brent C. Featherston, of FEATHERSTON LAW FIRM, CHTD. Defendants Auto Alley, LLC, and Calvin and Vicki Visser are represented by D. Toby McLaughlin, of BERG & MCLAUGHLIN, CHTD.

**I. INTRODUCTION**

Plaintiff Douglas Visser owns a parcel of real property in the City of Ponderay, Bonner County, Idaho. Calvin Visser and Vicki Visser, the plaintiff's son and ex-wife, respectively, rented a portion of the real property for the operation of an automobile parts and wrecking yard, pursuant to an oral agreement between the plaintiff and his son.

The plaintiff brought this action, alleging breach of contract and waste by the defendants, and seeking a writ of possession, money damages, and a preliminary injunction.

Upon the plaintiff's application, the Court issued a temporary restraining order ("TRO"). Thereafter, the parties and their counsel stipulated to continue the TRO and attempt mediation.<sup>1</sup> Following mediation, the parties executed a Mediated Settlement Agreement ("MSA"). See Plaintiff's Exhibit 31. The Court then entered a stipulated Judgment, based upon the MSA, which set forth certain obligations for the defendants to perform.

Disputes subsequently arose as to the defendants' performance under the terms of the stipulated Judgment, prompting the plaintiff to move for a writ of possession and judgment of quiet title. After an evidentiary hearing, the Court entered an interlocutory order entitled "Judgment Re Writ of Possession and Quiet Title," in which the Court declined to quiet title or enter a writ of possession at that time, and, *inter alia*, extended the defendants' deadline for performance.

The parties are now before the Court upon the defendants' motion for contempt, and the plaintiff's second motion for writ of possession and judgment of quiet title. An evidentiary hearing was held to resolve the factual issues regarding the defendants' performance under the stipulated Judgment. Upon consideration of the evidence presented, and the written and oral arguments of counsel, the following "Memorandum Decision and Order" is issued.

## **II. FINDINGS OF FACT**

1. Douglas Visser and Vicki Visser were divorced on February 7, 2005. Douglas was awarded the community real property located in the City of Ponderay, Bonner County, Idaho. See *Decree of Divorce*, Plaintiff's Exhibit 19. The property had previously been used as a wrecking yard.

2. The real property was encumbered by a promissory Note and Deed of Trust between Douglas and Vicki Visser, and the Joseph G. Lapham 401(k) plan, in the original amount of \$111,500.00 (hereafter, "Lapham debt"). *See Notice of Default*, Plaintiff's Exhibit 1.
3. Sometime in 2006, Douglas agreed to rent the back portion of the property to his son, Calvin. Calvin started a new automobile parts and wrecking yard business on the property. The oral agreement between Douglas and Calvin was that in lieu of rent, Calvin was to make the interest payments on the Lapham debt and pay the real property taxes, insurance, and utilities on the entire parcel.
4. In late 2006 or early 2007, Vicki moved back to Sandpoint from Spokane, Washington, and joined Calvin in the business. Vicki and Calvin operated the business as Auto Alley, LLC.
5. Vicki was not involved in negotiating the rental agreement with Douglas.
6. Douglas remarried in 2012. Douglas, his wife Margaret, and Calvin lived together in a house on the property. Vicki also lived on the property at another location.
7. In early 2013, Douglas discovered that the real property taxes were several years in arrears and that the county was threatening to take the property by tax deed due to delinquent taxes. Taxes were due for the years 2009 through 2012, in the total sum of \$52,807.52. *See Complaint* (filed June 25, 2013), at p. 3, ¶ XL.
8. On May 14, 2013, Douglas paid the sum of \$14,591.74 to pay off the delinquent 2009 real property taxes and stop the tax sale. *See Plaintiff's Exhibit 10A*.
9. The Lapham debt was also delinquent. The balance due exceeded \$295,000.00 on the original note of \$111,500.00.

---

<sup>1</sup> Attorney Charles B. Lempesis served as mediator.

10. On August 14, 2013, Lapham issued a Notice of Default on the Note and Deed of Trust.  
*See Plaintiff's Exhibit 1.*
11. On June 25, 2013, Douglas filed a Complaint, together with an application for prejudgment attachment and a TRO.
12. The Court entered a TRO on July 3, 2013; and the stipulated Judgment, based upon the MSA, on February 19, 2014 (hereafter, 'Judgment').
13. The Judgment provides that "ONLY upon condition that Defendants, and each of them, fully and completely perform all of the obligation [sic] as set forth hereafter ...," Douglas will convey to Vicki 6.2 acres of the real property designated as Lot 2. *See Judgment*, at page 2, ¶ A (emphasis in original).
14. The obligations, as set forth in the Judgment, include the following:
  - a. That the defendants pay all current and delinquent property taxes by January 27, 2014.
  - b. That the defendants pay the sum of \$3500.00 by the first of each month to the BRENT C. FEATHERSTON TRUST ACCOUNT in exchange for their continued occupation of the real property through March 31, 2014, with the payments to be applied to the Lapham debt.
  - c. That the defendants pay the sum of \$50,000.00 to Joseph Lapham on or before March 31, 2014, with the payment to be credited toward Vicki's portion of the Lapham debt.
  - d. That the defendants vacate Lot 1 (consisting of 6.5 acres) on or before March 31, 2014, remove all personal property, and restore the property to its August 15, 2013 condition, excepting normal wear and tear.



- e. That the defendants commission and pay for a Phase I Environmental Study by April 15, 2014.
  - f. That the defendants pay in full the balance of Vicki's portion of the Lapham debt on or before June 30, 2014, including all interest and fees.
15. The Judgment further provides that if the defendants fail to perform any of the above delineated obligations, the plaintiff is entitled to an immediate writ of possession and a judgment of quiet title.
16. On April 3, 2014, the plaintiff filed a Motion for Writ of Possession and Judgment of Quiet Title. An evidentiary hearing was held on April 23, 2014.
17. The evidence adduced at the hearing established that the defendants had complied with obligations 14(a), (b) and (c), as listed above, but had not complied with obligations 14(d) and (e). The time for compliance with obligation 14(f) had not yet accrued.
18. The Court declined to quiet title or enter a writ of possession at that time. In exchange for an additional payment of \$5000.00, the Court extended the defendants' deadline to vacate and restore Lot 1 by thirty (30) days, until April 30, 2014. Also, the defendants were ordered to pay the plaintiff's costs and attorney's fees incurred in filing and prosecuting the motion. The Court "reserve[d] ruling until further hearing as to issues concerning damages to the premises and all other issues that may arise from the Court's Judgment entered February 19, 2014." *See Judgment Re Writ of Possession and Quiet Title* (filed May 5, 2014).
19. On March 27, 2015, the plaintiff filed a second Motion for Writ of Possession and Judgment of Quiet Title. The day before, on March 26, 2015, the defendants filed a

Motion for Contempt. A second evidentiary hearing was held on May 20, 28 and 29, 2015.

20. The evidence adduced at the second evidentiary hearing established that the defendants have failed to comply with obligations 14(d) and (f), listed above, and that Douglas secured a new loan to pay off the Lapham debt, using the entire parcel as collateral. Specifically, the evidence showed that:

- a. The defendants did not fully vacate and restore Lot 1 by the extended April 30, 2014 deadline. Specifically, the defendants left some items of personal property on Lot 1; failed to repair some damage to the buildings on Lot 1 caused by the move; and even today, are continuing to use a road on Lot 1 to access Lot 2.
- b. The defendants did not pay Vicki's portion of the Lapham debt in full on or before June 30, 2014. In fact, nothing additional had been paid by June 30, 2014. On July 18, 2014, the defendants paid \$80,000.00 on the Lapham debt—somewhere between \$30,000.00 and \$45,000.00 less than Vicki's remaining balance on the debt.
- c. On July 1, 2014, the parties executed an Amendment, Modification and/or Correction of Deed of Trust and Promissory Note ("Modification Agreement"). The Modification Agreement increased the principal balance on the Lapham debt to \$308,827.44 as of February 13, 2014, and required final payment by October 12, 2014. *See Plaintiff's Exhibit 3.*
- d. On August 27, 2014, the plaintiff's attorney wrote to the defendants' former attorney, Margaret Williams, and to Joseph Lapham's attorney, Rex Finney, with

a proposal to resolve what Douglas viewed as the remaining issues. *See* Plaintiff's Exhibit 4. The defendants did not respond to Douglas' proposal.

- e. The Lapham debt came due on October 12, 2014.
- f. On December 24, 2014, Douglas executed a new Promissory Note and Deed of Trust in the amount of \$270,000.00 with third-party lenders. He pledged the entire parcel (Lot 1 and Lot 2) as collateral for this new loan. *See Promissory Note*, Plaintiff's Exhibit 6, and *Deed of Trust*, Plaintiff's Exhibit 7.
- g. On December 31, 2014, the new loan closed and Douglas paid off the Lapham debt, in the total amount of \$216,287.26. *See Settlement Statement*, Plaintiff's Exhibit 5.

21. On June 19, 2015, a Lis Pendens was filed by the defendants regarding Lot 2.

### III. DISCUSSION

#### A. Res Judicata Does Not Apply.

The defendants argue that res judicata applies in this case:

The Court ... issued a Judgment Re Writ of Possession and Quiet Title on May 5, 2014, in which the Court found, "That as of the hearing date, April 23, 2014, the Court finds that the **Defendants have substantially complied with the Judgment entered February 19, 2014**, and the Court declines to enter Quiet Title Judgment and Writ of Possession [in favor of the Plaintiff]." (emphasis added). This ruling acts as res judicata as to the issue of whether the Defendants have complied with the Judgment.

*Defendants' Post-Trial Brief* (filed June 12, 2015), at p. 2 (emphasis in original).

"Res judicata precludes re-litigation of issues that have been previously decided in a **final judgment** or decision in an action between the same litigants." *State v. Wolfe*, 158 Idaho 55, 343 P.3d 497, 505 (2015) (citation omitted) (emphasis supplied). In this case, the May 5, 2014, Judgment Re Writ of Possession and Quiet Title, despite how it was styled, was not a final

judgment, but an interlocutory order, intended to adjudicate the parties' disputes over the defendants' performance under the terms of the Judgment, as the defendants had not fully satisfied their obligations under the Judgment as of the date of the first evidentiary hearing.

In the May 5, 2014 order, the Court, recognizing that the defendants had substantially complied, declined to quiet title or enter a writ of possession, but rather, extended the deadline for the defendants to vacate and restore Lot 1. By so doing, the Court was by no means finally adjudicating the issue of quiet title or writ of possession, as is clearly evidenced by the statement therein that "[t]he Court will reserve ruling until further hearing as to issues concerning damages to the premises and all other issues that may arise from the Court's Judgment entered February 19, 2014, and these subsequent proceedings." *Judgment Re Writ of Possession and Quiet Title*, at p. 3, ¶ 7. Accordingly, the Court finds that res judicata does not apply.

**B. The defendants have failed to satisfy their obligations under the Judgment.**

The determinative issue in this case is the factual issue of whether the defendants have fully satisfied their obligations under the Judgment, therefore, triggering the plaintiff's obligation to deed Lot 2 to Vicki Visser. The Court finds that they have not.

As set forth in the findings of fact above, the evidence adduced at the second evidentiary hearing established that the defendants failed to comply with obligations 14(d) and (f), listed above. Moreover, the Court is not persuaded that the plaintiff in any way prevented Vicki from paying her share of the Lapham debt. With the defendants having failed to fully comply with their obligations under the Judgment, the plaintiff was entitled, also under the terms of the Judgment, to an immediate writ of possession and a judgment of quiet title.

The terms of the Judgment are unambiguous, and thus, shall be enforced by this Court as written and stipulated to by the parties. Nowhere in the Judgment does it say that substantial

compliance by the defendants is enough, and the Court shall not interpret it as such merely because Vicki finds herself in an unfortunate predicament of her own making. Having reached this conclusion, the Court shall not address any of the defendants' other equitable arguments.

**C. The Plaintiff is Not in Contempt.**

The defendants ask this Court to find Douglas Visser in civil and/or criminal contempt of the Judgment entered February 19, 2014, pursuant to Idaho Code § 7-610, for failing to convey to the defendants title to Lot 2, “[d]espite all of the Defendants’ obligations under the Judgment having been satisfied.” *Defendants’ Motion for Contempt* (filed March 26, 2015), at p. 3, § 1.6.

The Court having determined that the defendants have not fully satisfied all of their obligations under the terms of the Judgment, the Court finds that Douglas was not required to convey title to Lot 2 and is, thus, not in contempt.

**D. The Plaintiff is Entitled to Attorney’s Fees and Costs.**

Lastly, the Court, in the exercise of its discretion, finds that the plaintiff is the prevailing party, as defined in Idaho Rule of Civil Procedure 54(d)(1)(B).

As the prevailing party, the plaintiff is entitled to “a reasonable reimbursement of fees and costs payable by the non-prevailing party,” as expressly set forth in the stipulated Judgment. *See Judgment* (filed February 19, 2014), at p. 7, ¶ H.

**IV. CONCLUSION AND ORDER**

NOW, THEREFORE, based on the foregoing, IT IS HEREBY ORDERED THAT:

1. Plaintiff’s Motion for a Writ of Possession is GRANTED. **The defendants are ordered to fully vacate the entire parcel by 5:00p.m., Friday, August 7, 2015.**
2. Plaintiff’s Motion for a Judgment of Quiet Title is GRANTED.
3. Attorney’s fees and costs are awarded to the plaintiff in an amount to be determined.

IT IS FURTHER ORDERED THAT:

1. The plaintiff shall submit a proposed Order for Writ of Possession within seven (7) days of the date of this Order, stating that the defendants must fully vacate the entire parcel by 5:00p.m., Friday, August 7, 2015.
2. The defendants shall submit a proposed Order releasing the lis pendens filed on June 19, 2015, within seven (7) days of the date of this Order.
3. The plaintiff shall submit a Memorandum of Fees and Costs, and a proposed Order for Fees and Costs, within fourteen (14) days of the date of this Order. The defendants may file an objection thereto in the time allowed by law.
4. Following the determination of the award of fees and costs, and entry of an Order for Fees and Costs, the plaintiff shall submit a proposed final Judgment of Quiet Title, including the amount of the fee award therein.

IT IS SO ORDERED.

DATED this 6 day of July, 2015.



---

**Barbara Buchanan**  
**District Judge**

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, and delivered via facsimile transmission, this 10<sup>th</sup> day of July, 2015, to:

Brent C. Featherston  
FEATHERSTON LAW FIRM, CHTD.  
113 South Second Avenue  
Sandpoint, Idaho 83864  
Fax# (208) 263-0400

D. Toby McLaughlin  
BERG & MCLAUGHLIN, CHTD.  
414 Church Street, Suite 203  
Sandpoint, ID 83864  
Fax# (208) 263-7557

  
Deputy Clerk

STATE OF IDAHO  
 County of Bonner } ss  
 FILED Jul 15, 2015  
 AT 4:59 O'CLOCK P M  
 CLERK. DISTRICT COURT  
 Deputy

1 TOBY McLAUGHLIN, ISB No. 7405  
 2 Berg & McLaughlin, Chtd.  
 3 414 Church Street, Ste 203  
 4 Sandpoint, ID 83864  
 Telephone: (208)263-4748  
 Facsimile: (208)263-7557

5 *Attorneys for Defendants*

6 IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT OF THE  
 7 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

8 NO. CV-2013-1045

9 DOUGLAS VISSER, a married man as to his  
 sole and separate property,

10 Plaintiff

DEFENDANTS' OBJECTION TO WRIT  
 OF POSSESSION

11 vs.

12 AUTO ALLEY, LLC, an Idaho limited liability  
 company, CALVIN VISSER and VICKI  
 13 VISSER, as individuals in their capacity as  
 Members and/or Managers of Auto Alley, LLC,

14 Defendant.  
 15

16 In its Memorandum Decision and Order, the Court instructed the Plaintiff to "submit a  
 17 proposed Order for Writ of Possession . . . stating that the defendants must fully vacate the entire  
 18 parcel by 5:00 p.m., Friday, August 7, 2015." (*Memo. Dec. and Ord.*, p. 10). The Plaintiff  
 19 submitted a proposed Writ of Possession on July 13, 2015, a true and correct copy of which is  
 20 attached here as *Exhibit A*.

21 The proposed writ contains the following language to which the Defendants object:

22 The Plaintiff and Sheriff of Bonner County are authorized and  
 23 empowered to cause the Defendants' personal property on the  
 24 Premises to be removed to a safe place for storage or crushed, sold  
 or disposed of under the Plaintiff's direction with all such funds  
 25 received to be deposited with the Bonner County Clerk of Court.  
 You are also commanded to levy the goods and chattels of the  
 Defendants, and pay the costs and disbursements, aforesaid, and all



1 accruing costs, and to make legal service and due return of this  
2 writ.

3 The proposed Writ would allow the Plaintiff to take self-help action in seizing the  
4 Defendants' personal possessions and holding them, or even liquidating the assets. Neither the  
5 underlying Judgment nor the Court's Memorandum Decision and Order authorize such relief.  
6 The language in the Judgment is as follows:

7 The Court shall thereafter enter a Judgment of Quiet Title in favor  
8 of Plaintiff, Douglas Visser, quieting any and all claims of the  
9 Defendants to the real property described in Exhibit "A" upon such  
10 default or failure to perform my [sic] Defendants. Said Judgment  
11 of Quiet Title and Writ of Possession shall include direction to the  
12 Bonner County Sheriff or other Authority to restore possession  
13 of the premises by thereafter removing and disposing of any and  
14 all personal property or inventory of the Defendants upon the  
15 premises with the proceeds thereof to be paid to the Lapham  
16 debt as required by Lapham in a separate Modification of the  
17 Escrow account.

18 (Judgment, p. 7) (*emphasis added*).

19 The proposed Writ simply does not comply with the terms of the Judgment. At this point,  
20 no Judgment of Quiet Title has been entered, and it is that Judgment which is to contain the  
21 direction to the Sheriff. Moreover, nothing in this language provides authority allowing the  
22 Plaintiff to seize the Defendants' personal property prior to the date that the Defendants are  
23 ordered to vacate the property. Rather, such authority is restricted to the Sheriff, as is required  
24 under Idaho judgment execution statutes. *See Idaho Code 8-501 et. seq.*

25 Moreover, no monetary judgment has been issued by the Court as of this date. Short of a  
pre-judgment writ of attachment, for which the Plaintiff has not moved as the grounds for such  
relief do not exist, there is no authority under Idaho law authorizing the District Court to allow a  
party to conduct pre-execution self-help of the Defendants' property. Yet, this is exactly the

1 authority that will be granted to the Plaintiff through the proposed writ, if granted in its current  
2 form.

3       The Judgment does not grant to the Plaintiff a security interest in the Defendants'  
4 personal property. In fact, the Mediated Settlement Agreement from which the Stipulated  
5 Judgment was supposed to have been based, provides no basis whatsoever allowing the Plaintiff  
6 to seize any of the Defendants' personal property. More importantly, the language in the  
7 Judgment does not grant to the Plaintiff a security interest in the Defendants' personal property.  
8 It merely allows the Sheriff to seize and liquidate the property after the Defendants have vacated  
9 the property, and only for one expressed purpose – "with the proceeds thereof to be paid to the  
10 Lapham debt as required by Lapham in a separate Modification of the Escrow account." The  
11 Lapham debt, however, has been paid in full. Consequently, there is no basis under the  
12 Judgment to allow the Plaintiff to seize any of the Defendants' personal property.

14       The only other authority by which the Court might grant such relief is Rule 65(f) of the  
15 Idaho Rules of Civil Procedure, which provides, in relevant part:

16       F. The district courts, in addition to the powers already possessed,  
17 shall have power to issue writs of injunction for affirmative relief  
18 having the force and effect of a writ of restitution, restoring any  
19 person or persons to the possession of any real property from the  
20 actual possession of which the person or persons may be ousted by  
21 force, or violence, or fraud, or stealth, or any combination thereof,  
22 or from which the person or persons are kept out of possession by  
23 threats whenever such possession was taken from them by entry of  
24 the adverse party on Sunday or a legal holiday, or in the nighttime,  
25 or while the party in possession was temporarily absent therefrom.  
The granting of such writ shall extend only to the right of  
possession under the facts of the case, in respect to the manner in  
which the possession was obtained, leaving the parties to their  
legal rights on all other questions the same as though no such writ  
had issued: provided, that no such writ shall issue except upon  
notice in writing to the adverse party of at least seven (7) days of  
the time and place of making application therefor.

1 This rule is clearly inapplicable, as there is no evidence that the Defendants acquired  
2 possession by way of force, or violence, or fraud, or stealth or threats. Moreover, such a writ  
3 cannot extend to personal property.

4 For the reasons set forth herein, the Defendants object to the proposed Writ, and request  
5 that the Court order that the writ only apply to the real property currently in the possession of the  
6 Defendants.

7 DATED this 14<sup>th</sup> day of July, 2015.

8 BERG & McLAUGHLIN, CHTD.

9  
10 By: 

11 Toby McLaughlin  
12 Attorneys for the Defendant/Petitioner  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## CERTIFICATE OF SERVICE

On ~~June~~ <sup>July</sup> 15<sup>th</sup>, 2015, I caused copies of the foregoing document to be served by the

following methods on the parties listed below as follows, which is the last known address for the listed party:

Margaret Williams, Esq.  
P.O. Box 283  
Pondcray, ID 83852

☐ By Hand Delivery  
☐ By U.S. Mail  
☐ By Overnight Mail  
☒ By Facsimile Transmission

*Attorney for the Defendants*

Brent C. Featherston  
FEATHERSTON LAW FIRM, CHTD.  
113 South Second Ave.  
Sandpoint, ID 83864

☐ By Hand Delivery  
☐ By U.S. Mail  
☐ By Overnight Mail  
☒ By Facsimile Transmission

*Attorneys for the Plaintiff/Respondent*

  
Tricia Sturgis

**FEATHERSTON LAW FIRM, CHTD.****BRENT C. FEATHERSTON, ISB# 4602**

Attorney at Law

113 S. Second Avenue

Sandpoint, ID 83864

(208) 263-6866

(208) 263-0400 (Fax)

brent@featherstonlaw.com

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man )  
as to his sole and separate property, )

Plaintiff, )

vs. )

AUTO ALLEY, LLC, an Idaho )  
limited liability company, CALVIN )  
VISSER and VICKI VISSER, as )  
individuals and in their capacity as )  
Members and/or Managers of )  
Auto Alley, LLC, )

Defendants. )

CASE NO. CV-2013-1045

**WRIT OF POSSESSION**

**THE STATE OF IDAHO  
TO THE SHERIFF OF BONNER COUNTY  
GREETINGS:**

**WHEREAS**, a certain action for the possession of the following described premises,  
to-wit:

Lots 1 and 2 of Ponderay Place, according to the Plat recorded  
July 11, 2014, in Book 1 of Plats at Page 20, as Instrument No.  
861642, records of Bonner County, Idaho, and also described as  
follows:

A tract of land located in Section 11, Township 57 North, Range  
2 West, Boise Meridian, Bonner County, Idaho, more fully  
described as follows:

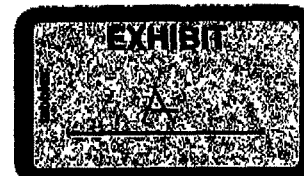
**WRIT OF POSSESSION - 1**

**FEATHERSTON LAW FIRM, CHTD.**  
Attorney at Law

Deniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho &amp; Washington



Commencing at the Northeast corner of Section 11;

Thence South 89°20'25" West along the North line of said Section 11, a distance of 856.71 feet (said point being North 89°20'25" East a distance of 466.70 feet from the 1/16 corner);

Thence South 00°11'04" East parallel with the 1/16 line a distance of 128.80 feet to the point of beginning;

Thence South 00°11'04" East, 932.12 feet;

Thence North 89°48'56" East a distance of 571.58 feet;

Thence North 52°09'36" East to an intersection with the East line of said Section 11;

Thence North 00°00'43" West 136.84 feet;

Thence South 89°59'17" West 374.97 feet;

Thence North 00°00'43" West 580.80 feet;

Thence South 89°15'35" West 481.34 feet to the point of beginning.

("Premises")

was heard before the above-entitled Court, wherein Auto Alley, LLC, an Idaho limited liability company, CALVIN VISSER and VICKI VISSER, as individuals and in their capacity as Members and/or Managers of Auto Alley, LLC, were Defendants, a Memorandum Decision and Order was rendered on the 6<sup>th</sup> day of July, 2015, that the Plaintiff, Douglas Visser, shall have full restitution and possession of the above-described Premises.

In the name of the State of Idaho, you are, therefore, hereby commanded to cause the Defendants and their goods and chattels to be forthwith removed from the Premises on or after 5:00 p.m., Friday, August 7, 2015, and the Plaintiff shall have restitution and possession of the

**FEATHERSTON LAW FIRM, CHD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jerome L. Osaman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

WRIT OF POSSESSION - 2

same on or after said date and time.. The Plaintiff and Sheriff of Bonner County are authorized and empowered to cause the Defendants' personal property on the Premises to be removed to a safe place for storage or crushed, sold or disposed of under the Plaintiff's direction with all such funds received to be deposited with the Bonner County Clerk of Court. You are also commanded to levy the goods and chattels of the Defendants, and pay the costs and disbursements, aforesaid, and all accruing costs, and to make legal service and due return of this writ.

WITNESS my hand and official seal this \_\_\_\_ day of July, 2015.

HON. BARBARA BUCHANAN

### CERTIFICATE OF MAILING

I hereby certify that on the \_\_\_\_ day of July, 2015, I caused a true and correct copy of the foregoing document to be served upon the following person in the following manner:

Brent C. Featherston, Esq.  
FEATHERSTON LAW FIRM, CHTD.  
113 S. Second Avenue  
Sandpoint, ID 83864

☐ U.S. Mail, Postage Prepaid  
☐ Overnight Mail  
☐ Hand delivered  
☐ Facsimile No. (208) 263-0400  
☐ Other: \_\_\_\_\_

D. Toby McLaughlin, Esq.  
BERG & McLAUGHLIN, CHTD.  
414 Church Street, Suite 203  
Sandpoint, ID 83864

☐ U.S. Mail, Postage Prepaid  
☐ Overnight Mail  
☐ Hand delivered  
☐ Facsimile No. (208) 263-7557  
☐ Other: \_\_\_\_\_

FEATHERSTON LAW FIRM, CHTD.  
Attorneys at Law

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Osaman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

By \_\_\_\_\_

WRIT OF POSSESSION - 3

*The Offices of:***Featherston Law Firm chtd.**STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.*Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman  
Attorneys at Law*

July 13, 2015

2015 JUL 15 P 4:01

CLERK DISTRICT COURT

Via Facsimile No. (208) 263-0896 and  
email: [bbuchanan@bonnercountyid.gov](mailto:bbuchanan@bonnercountyid.gov)

Honorable Barbara Buchanan  
Boundary County District Court  
P.O. Box 419  
Bonners Ferry, ID 83805

Re: Visser v. Auto Alley, LLC, et al.  
Boundary County Case No. CV-2013-1045

Dear Judge Buchanan:

In regard to the Writ of Possession presented to the Court on Monday afternoon, July 13<sup>th</sup>, I have received Mr. McLaughlin's Objection yesterday via email. Mr. McLaughlin indicates that he wishes the Court to hold off entry of the Writ because it does not account for possible exemptions. Under Idaho law, the Writ is issued first and served by the Sheriff. Thereafter, Mr. McLaughlin's client can assert any exemptions as provided by statute. This procedure is spelled out in Idaho Code Title 11, Chapter 2 and, specifically, I.C. 11-203(a), which provides that claims of exemptions are to be delivered to the sheriff within fourteen (14) days after the sheriff has served the writ of attachment and garnishment or execution.

In short, Mr. McLaughlin's Objection notwithstanding, there is no basis to hold off entry of the Writ. Additionally, Mr. McLaughlin indicates that he intends to file a Motion for Reconsideration and Motion for Stay pending appeal. Again, these are not grounds on which to delay enter of the Court's Order.

Please also note that the Writ of Possession takes effect, per the Court's Memorandum Decision, after 5:00 p.m. on Friday, August 7<sup>th</sup>.

If the Court or Counsel have any substantive concerns with the content of the proposed Writ, I am certainly willing to consider that, but I do not believe Mr. McLaughlin's objections are well placed under Idaho law.

I understand Mr. McLaughlin had some difficulty in receiving the Court's Memorandum Decision. Our office received two (2) hard copies in the U.S. Mail on July 7<sup>th</sup>, but no faxed copy was received, as indicated on the Certificate of Mailing.

*\* Licensed in Idaho & Washington*

113 S. Second Ave. • Sandpoint, Idaho 83864 • (208) 263-6866 • Fax (208) 263-0400



Honorable Barbara Buchan...

July 15, 2015

Page Two

---

I note our office was never served with the Lis Pendens, and I only learned of it for the first time upon reading the Court's Memorandum Decision and Order. I did obtain a copy from the Court file yesterday of the Lis Pendens as filed on June 19<sup>th</sup>. It does not bear any recordation information, therefore, I will trust that Mr. McLaughlin's proposed Order Releasing Lis Pendens correctly recites the recording information. I would appreciate it if Mr. McLaughlin's office could provide me with a conformed true copy of the recorded instrument for my file, as well.

Thank you for your attention to this matter.

Sincerely,

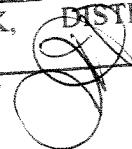
FEATHERSTON LAW FIRM, CHTD.



BRENT C. FEATHERSTON  
Attorney at Law

BCF/clb

cc: D. Toby McLaughlin, Esq. (via fax)

STATE OF IDAHO  
County of Bonner  
FILED Jul 16, 2015 ss  
AT \_\_\_\_\_ O'CLOCK \_\_\_\_\_ M  
CLERK, DISTRICT COURT  
Deputy 

TOBY McLAUGHLIN, ISB No. 7405  
JOSH HICKEY, ISB No. 9409  
Berg & McLaughlin, Chtd.  
414 Church Street, Ste. 203  
Sandpoint, ID 83864  
Telephone: (208)263-4748  
Facsimile: (208)263-7557

*Attorneys for Defendants*

IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

DOUGLAS VISSER, a married man as to his  
sole and separate property,

Plaintiff,

vs.

AUTO ALLEY, LLC, an Idaho limited liability  
company, CALVIN VISSER and VICKI  
VISSER, as individuals in their capacity as  
Members and/or Managers of Auto Alley, LLC,

Defendants.

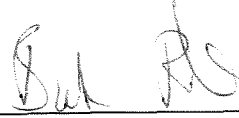
NO. CV-2013-1045

ORDER RELEASING LIS PENDENS

Pursuant to the Memorandum Decision and Order issued herein on July 6, 2015, IT IS  
HEREBY ORDERED that the Lis Pendens filed herein on June 9<sup>th</sup>, 2015, and recorded in the  
records of Bonner County as instrument number 875421, which pertains to the following parcel of  
real property, is hereby released:

**Lot 2 of Ponderay Place according to the official plat thereof, filed in Book 11 of  
Plats at Page(s) 20, records of Bonner County, Idaho.**

1 DATED this 16 day of July, 2015.

2  
3 

4 Barbara Buchanan  
5 District Judge  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE OF SERVICE

On June 21<sup>st</sup>, 2015, I caused copies of the foregoing document to be served by the following methods on the parties listed below as follows, which is the last known address for the listed party:

Margaret Williams, Esq.  
P.O. Box 283  
Ponderay, ID 83852

- ☐ By Hand Delivery  
☒ By U.S. Mail  
☐ By Overnight Mail  
☐ By Facsimile Transmission

*Attorney for the Defendants*

Brent C. Featherston  
FEATHERSTON LAW FIRM, CHTD.  
113 South Second Ave.  
Sandpoint, ID 83864

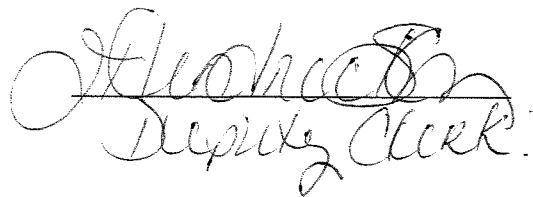
- ☐ By Hand Delivery  
☒ By U.S. Mail  
☐ By Overnight Mail  
☐ By Facsimile Transmission

*Attorneys for the Plaintiff/Respondent*

Toby McLaughlin  
BERG & McLAUGHLIN, CHTD.  
414 Church St., Ste. 203  
Sandpoint, ID 83864

- ☐ By Hand Delivery  
☒ By U.S. Mail  
☐ By Overnight Mail  
☐ By Facsimile Transmission

*Attorney for Defendants*

  
Deputy Clerk

ORIGINAL

**FEATHERSTON LAW FIRM, CHTD.**

BRENT C. FEATHERSTON, ISB# 4602

Attorney at Law

113 S. Second Avenue

Sandpoint, ID 83864

(208) 263-6866

(208) 263-0400 (Fax)

brent@featherstonlaw.com

STATE OF IDAHO  
County of Bonner

FILED July 16 2015

AT \_\_\_\_\_ O'CLOCK \_\_\_\_\_ M  
CLERK. DISTRICT COURT

Deputy

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man )  
as to his sole and separate property, )

Plaintiff, )

vs. )

AUTO ALLEY, LLC, an Idaho )  
limited liability company, CALVIN )  
VISSER and VICKI VISSER, as )  
individuals and in their capacity as )  
Members and/or Managers of )  
Auto Alley, LLC, )

Defendants. )

CASE NO. CV-2013-1045

**WRIT OF POSSESSION**

**THE STATE OF IDAHO  
TO THE SHERIFF OF BONNER COUNTY  
GREETINGS:**

**WHEREAS**, a certain action for the possession of the following described premises,  
to-wit:

Lots 1 and 2 of Ponderay Place, according to the Plat recorded  
July 11, 2014, in Book 11 of Plats at Page 20, as Instrument No.  
861642, records of Bonner County, Idaho, and also described as  
follows:

A tract of land located in Section 11, Township 57 North, Range  
2 West, Boise Meridian, Bonner County, Idaho, more fully  
described as follows:

**WRIT OF POSSESSION - 1**

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

410

Commencing at the Northeast corner of Section 11;

Thence South 89°20'25" West along the North line of said Section 11, a distance of 856.71 feet (said point being North 89°20'25" East a distance of 466.70 feet from the 1/16 corner);

Thence South 00°11'04" East parallel with the 1/16 line a distance of 128.80 feet to the point of beginning;

Thence South 00°11'04" East, 932.12 feet;

Thence North 89°48'56" East a distance of 571.58 feet;

Thence North 52°09'36" East to an intersection with the East line of said Section 11;

Thence North 00°00'43" West 136.84 feet;

Thence South 89°59'17" West 374.97 feet;

Thence North 00°00'43" West 580.80 feet;

Thence South 89°15'35" West 481.34 feet to the point of beginning.

("Premises")

was heard before the above-entitled Court, wherein Auto Alley, LLC, an Idaho limited liability company, CALVIN VISSER and VICKI VISSER, as individuals and in their capacity as Members and/or Managers of Auto Alley, LLC, were Defendants, a Memorandum Decision and Order was rendered on the 6<sup>th</sup> day of July, 2015, that the Plaintiff, Douglas Visser, shall have full restitution and possession of the above-described Premises.

In the name of the State of Idaho, you are, therefore, hereby commanded to cause the Defendants and their goods and chattels to be ~~forthwith~~ removed from the Premises on or after 5:00 p.m., Friday, August 7, 2015, and the Plaintiff shall have restitution and possession of the

FEATHERSTON LAW FIRM, CHTD.  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

WRIT OF POSSESSION - 2

408

BB

On or after August 7, 2015 5:00 pm

same on or after said date and time.. The Plaintiff and Sheriff of Bonner County are authorized and empowered to cause the Defendants' personal property on the Premises to be removed to a safe place for storage or crushed, sold or disposed of under the Plaintiff's direction with all such funds received to be deposited with the Bonner County Clerk of Court. You are also commanded to levy the goods and chattels of the Defendants, and pay the costs and disbursements, aforesaid, and all accruing costs, and to make legal service and due return of this writ.

WITNESS my hand and official seal this 16 day of July, 2015.

Barbara Buchanan  
HON. BARBARA BUCHANAN

CERTIFICATE OF MAILING

I hereby certify that on the 27<sup>th</sup> day of July, 2015, I caused a true and correct copy of the foregoing document to be served upon the following person in the following manner:

Brent C. Featherston, Esq.  
FEATHERSTON LAW FIRM, CHTD.  
113 S. Second Avenue  
Sandpoint, ID 83864

- ☒ U.S. Mail, Postage Prepaid
- ☐ Overnight Mail
- ☐ Hand delivered
- ☐ Facsimile No. (208) 263-0400
- ☐ Other: \_\_\_\_\_

D. Toby McLaughlin, Esq.  
BERG & McLAUGHLIN, CHTD.  
414 Church Street, Suite 203  
Sandpoint, ID 83864

- ☒ U.S. Mail, Postage Prepaid
- ☐ Overnight Mail
- ☐ Hand delivered
- ☐ Facsimile No. (208) 263-7557
- ☐ Other: \_\_\_\_\_

FEATHERSTON LAW FIRM, CHTD.  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman  
  
113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

By Glen Macdonald  
Deputy Clerk

\*Licensed in Idaho & Washington

1 TOBY McLAUGHLIN, ISB No. 7405  
2 Berg & McLaughlin, Chtd.  
3 414 Church Street, Ste 203  
4 Sandpoint, ID 83864  
5 Telephone: (208)263-4748  
6 Facsimile: (208)263-7557

7 *Attorneys for Defendants*

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

NO. CV-2013-1045

DOUGLAS VISSER, a married man as to his  
sole and separate property,

Plaintiff

vs.

AUTO ALLEY, LLC, an Idaho limited liability  
company, CALVIN VISSER and VICKI  
VISSER, as individuals in their capacity as  
Members and/or Managers of Auto Alley, LLC,

Defendant.

NOTICE OF HEARING

RE: MOTION FOR RECONSIDERATION

Date: August 5, 2015

Time: 3:30 p.m.

Place: Bonner County Courthouse

Judge: Barbara Buchanan

NOTICE IS HEREBY GIVEN that the Defendant will bring on for hearing its Motion for  
Reconsideration in the above-entitled matter on the 5<sup>th</sup> day of August, 2015, at the hour of 3:30  
p.m., or as soon thereafter as counsel may be heard, in a courtroom of the above-entitled  
courthouse before the Honorable Judge Barbara Buchanan.

DATED this 16<sup>th</sup> day of July, 2015

BERG & McLAUGHLIN, Attorneys at Law

By: 

Toby McLaughlin  
Attorneys for Plaintiff



CERTIFICATE OF SERVICE

On July 17, 2015, I caused copies of the foregoing document to be served by the following methods on the parties listed below as follows, which is the last known address for the listed party:

Margaret Williams, Esq.  
P.O. Box 283  
Ponderay, ID 83852


☐ By Hand Delivery  
☒ By U.S. Mail  
☐ By Overnight Mail  
☐ By Facsimile Transmission

*Attorney for the Defendants*

Brent C. Featherston  
FEATHERSTON LAW FIRM, CHTD.  
113 South Second Ave.  
Sandpoint, ID 83864

☐ By Hand Delivery  
☐ By U.S. Mail  
☐ By Overnight Mail  
☒ By Facsimile Transmission

*Attorneys for the Plaintiff/Respondent*

  
Stephanie Allen

1 TOBY McLAUGHLIN, ISB No. 7405  
2 Berg & McLaughlin, Chtd.  
3 414 Church Street, Ste 203  
4 Sandpoint, ID 83864  
5 Telephone: (208)263-4748  
6 Facsimile: (208)263-7557

7 *Attorneys for Defendants*

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

NO. CV-2013-1045

DOUGLAS VISSER, a married man as to his  
sole and separate property,

Plaintiff

vs.

AUTO ALLEY, LLC, an Idaho limited liability  
company, CALVIN VISSER and VICKI  
VISSER, as individuals in their capacity as  
Members and/or Managers of Auto Alley, LLC,

Defendant.

DEFENDANTS' MOTION FOR  
RECONSIDERATION AND FOR STAY  
OF EXECUTION OF JUDGMENT

COMES NOW, the above named Defendants, and move this Court for Reconsideration  
of its Memorandum Decision and Order, and also moves the Court for a stay of execution of the  
Judgment issued in this case pending appeal. This Motion is supported by the Memorandum filed  
contemporaneously herewith, as well as the records and files herein.

DATED this 20<sup>th</sup> day of July, 2015.

BERG & McLAUGHLIN, CHTD.

By: 

Toby McLaughlin  
Attorneys for the Defendant/Petitioner

CERTIFICATE OF SERVICE

On July 20<sup>th</sup>, 2015, I caused copies of the foregoing document to be served by the following methods on the parties listed below as follows, which is the last known address for the listed party:

Margaret Williams, Esq.  
P.O. Box 283  
Ponderay, ID 83852

- ☐ By Hand Delivery  
☐ By U.S. Mail  
☐ By Overnight Mail  
☒ By Facsimile Transmission

*Attorney for the Defendants*

Brent C. Featherston  
FEATHERSTON LAW FIRM, CHTD.  
113 South Second Ave.  
Sandpoint, ID 83864

- ☐ By Hand Delivery  
☐ By U.S. Mail  
☐ By Overnight Mail  
☒ By Facsimile Transmission

*Attorneys for the Plaintiff/Respondent*

  
Tricia Sturgis

TOBY McLAUGHLIN, ISB No. 7405  
Berg & McLaughlin, Chtd.  
414 Church Street, Ste 203  
Sandpoint, ID 83864  
Telephone: (208)263-4748  
Facsimile: (208)263-7557

*Attorneys for Defendants*

IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

NO. CV-2013-1045

DOUGLAS VISSER, a married man as to his  
sole and separate property,

Plaintiff

vs.

AUTO ALLEY, LLC, an Idaho limited liability  
company, CALVIN VISSER and VICKI  
VISSER, as individuals in their capacity as  
Members and/or Managers of Auto Alley, LLC,

Defendant.

MEMORANDUM IN SUPPORT OF  
DEFENDANTS' MOTION FOR  
RECONSIDERATION AND FOR STAY  
OF EXECUTION OF JUDGMENT

**I. MOTION FOR RECONSIDERATION**

The above named Defendants hereby respectfully request that this Court reconsider its Memorandum Decision and Order, on the basis that the District Court erred in: (1) refusing to consider and resolve the Defendants' claim that the forfeiture granted in favor of the Plaintiff constitutes an inequitable penalty, as the damages to the Plaintiff from the alleged breach of the stipulated Judgment results in a penalty to the Defendants, which bears no reasonable relation to the actual damages suffered by the Plaintiff; and (2) finding that the Plaintiff did not prevent Vicki Visser from paying her share of the Lapham debt; and (3) the Court having overlooked the portion of the Judgment that required the parties to split the debt upon the successful subdivision of the property.

MEMO. IN SUP. OF D'S MOT. FOR  
RECONSIDERATION AND FOR STAY OF  
EXECUTION OF J. - 1

1           **A. The Court Erred by Refusing to Consider the Defendants' Equitable**  
2           **Arguments.**

3           The Defendants have asserted as defenses to the relief sought by the Plaintiff's that the  
4 result is an inequitable foreclosure that this Court could only enforce upon a finding that it does  
5 not constitute a penalty. In fact, the evidence at the hearing established that the forfeiture fixed  
6 by the stipulated Judgment is arbitrary and bears no reasonable relation to the damages claimed  
7 by the Plaintiff, and is exorbitant and unconscionable. Consequently, under Idaho law, such a  
8 remedy is void and unenforceable.

9           The District Court, however, refused to resolve this issue. As  
10 stated in its Memorandum, The terms of the Judgment are  
11 unambiguous, and thus, shall be enforced by this Court as written  
12 and stipulated to by the parties. Nowhere in the Judgment does it  
13 say that substantial compliance by the defendants is enough, and  
14 the Court shall not interpret it as such merely because Vicki finds  
15 herself in an unfortunate predicament of her own making. Having  
16 reached this conclusion, the Court shall not address any of the  
17 defendants' other equitable arguments.

18           (*Memo. Dec. and Ord.*, p. 9).

19           Respectfully, this analysis misapplies Idaho law. Whether the agreement is ambiguous is  
20 not determinative of the claims asserted by the Defendants. This is not a situation where the  
21 Court is being asked to find the intent of the parties – an analysis that does require the District  
22 Court to resolve whether the agreement is ambiguous. Rather, the Defendants have asserted that  
23 the stipulated judgment is unconscionable. Whether there is ambiguity in the Judgment is  
24 immaterial to resolving this question.

25           Actions to forfeit contractual rights of the defaulting party, pursuant to a forfeiture clause,  
are addressed to the court's equitable discretion. *Graves v. Cupic*, 75 Idaho 451, 272 P.2d 1020  
(1954); *Howard v. Bar Bell Land & Cattle Co.*, 81 Idaho 189, 196, 340 P.2d 103, 107 (1959)  
("An action to quiet title is one which invokes the equity jurisdiction of the court."). It is a well-

1 established legal maxim, and one adopted by the Courts in Idaho, that "equity abhors  
2 forfeitures." *Stringer v. Swanstrum*, 66 Idaho 752, 759-60, 168 P.2d 826, 829-30 (1946). Under  
3 Idaho law, where the forfeiture or damages fixed by the contract are arbitrary and bear no  
4 reasonable relation to the anticipated damages, and are exorbitant and unconscionable, they are  
5 regarded as a 'penalty' and the contractual provision therefore is void and unenforceable. *Id.*  
6 *Walker v. Nunnenkamp*, 84 Idaho 485, 491, 373 P.2d 559, 562 (1962).

7  
8 As explained by the Idaho Supreme Court in the *Graves* decision:

9 Generally speaking, parties to a contract may agree upon liquidated  
10 damages in anticipation of a breach, in any case where the  
11 circumstances are such that accurate determination of the damages  
12 would be difficult or impossible, and provided that the liquidated  
13 damages fixed by the contract bear a reasonable relation to actual  
14 damages. **But, where the forfeiture or damage fixed by the  
15 contract is arbitrary and bears no reasonable relation to the  
16 anticipated damage, and is exorbitant and unconscionable, it is  
17 regarded as a 'penalty', and the contractual provision therefor  
18 is void and unenforceable.** The applicable principle is set out in 1  
19 Restatement of the Law, Contracts, § 339, as follows:  
20 'Liquidated Damages and Penalties.

21 '(1) An agreement, made in advance of breach, fixing the  
22 damages therefor, is not enforceable as a contract and does not  
23 affect the damages recoverable for the breach, unless

24 '(a) the amount so fixed is a reasonable forecast of  
25 just compensation for the harm that is caused by the breach,  
and

'(b) the harm that is caused by the breach is one that  
is incapable or very difficult of accurate estimation.'

26 *Graves*, 75 Idaho at 456-57.

27 The Court cannot, without committing reversible error, simply refuse to resolve this issue  
28 on the grounds that the contract is unambiguous, as it has done in this case. In fact, the stipulated  
29 Judgment does impose an unconscionable penalty in the form of forfeiture.

1 In its Memorandum Decision, the Court found that the Defendants "have failed to comply  
2 with obligations 14(d) and (f) of the Judgment. There is no evidence, however, that the damages  
3 suffered by Plaintiff for these alleged defaults reasonably equivalent to the loss of Lot 2 to the  
4 Defendants, or the more than \$230,000 that that the Defendants have invested into these  
5 properties since the entry of the Mediated Settlement Agreement.

6 The District Court found that the Defendants failed to comply with the following two  
7 obligations set forth in the Judgment:

8 That the defendants vacate Lot 1 (consisting of 6.5 acres) on or  
9 before March 31, 2014, remove all personal property, and restore  
10 the property to its August 15, 2013 condition, excepting normal  
11 wear and tear.

12 That the defendants pay in full the balance of Vicki's portion of the  
13 Lapham debt on or before June 30, 2014, including all interest and  
14 fees.

15 (*Mem. Dec. & Ord.*, pp. 5, 6, 8).

16 The evidence presented at the hearing established that the alleged damages resulting from  
17 these defaults is a fraction of the value of Lot 2, or the considerable investment made by the  
18 Defendants in terms of money (more than \$230,000) and labor. With regard to Mr. Visser's  
19 claim that a few of the Defendants possessions remain in an outbuilding located on Lot 1, there is  
20 no evidence that this caused damage to Mr. Visser in any way. The same is true with regard to  
21 the Defendants use of a very small section of road located on Lot 1 to access Lot 2. The alleged  
22 repairs to the shop building are a mere few thousand dollars. There was simply no evidence that  
23 these damages are reasonably related to the loss that the Defendants will be forced to suffer if  
24 they are required to forfeit their entire investment.

25 As to the payment of the Lapham debt, the evidence admitted at the hearing established  
that Vicki had paid all but about \$30,000 of the debt, whereas, Douglas had paid almost nothing

1 toward his half of this obligation. Even if the Court were to find that Vicki owed \$45,000, which  
2 is not the case, the damages suffered by Mr. Visser pale in comparison to the loss to the  
3 Defendants upon a forfeiture.

4 *Graves* and its progeny require that this Court resolve this issue. There is no authority  
5 which authorizes this Court to abdicate its role as a Court of equity simply because the contract  
6 at issue (here, a stipulated judgment), is unambiguous. After all, every land sale contract  
7 unambiguously requires the buyer to make every single payment due thereunder before title will  
8 be transferred by the seller. Yet, Idaho jurisprudence is replete with cases where the Courts,  
9 despite this clear language, nevertheless find that the resulting forfeiture acts as an  
10 unconscionable penalty, and refuses to enforce such a clause.

11  
12 In the instant case, the evidence clearly demonstrates that a forfeiture will result in an  
13 inequitable penalty to the Defendants. The Defendants, therefore, ask this Court to allow the  
14 Defendants the right to pay off the remainder of Vicki's share of the Lapham debt to Mr. Visser  
15 in exchange for title to Lot 2.

16 **B. The Court Erred by Finding that Mr. Visser Did not Prevent Vicki from Paying**  
17 **Her Share of the Lapham Mortgage.**

18 In its decision, the District Court made the following finding: "the Court is not persuaded  
19 that the plaintiff in any way prevented Vicki from paying her share of the Lapham debt." (*Mem.*  
20 *Dec. & Ord.*, p. 8). Yet, at the evidentiary hearing. *Mr. Visser admitted* that he refused to  
21 transfer title to Ms. Visser, or allow Lot 2 to be used as collateral in a refinance, until Ms. Visser  
22 completed the construction of a new road to Lot 2, and provided to Mr. Visser an environmental  
23 report that showed that it "had a clean bill of health." Neither of these are obligations of the  
24 Defendants pursuant to the Judgment, and this Court has not found that the Defendants were  
25 obligated to perform either of these tasks. This is also evidenced by the letter from Mr.



1 Featherston, who demanded additional tasks as a condition for the transfer of title to Lot 2. (Ex.  
2 4). The Court's finding, therefore, ignores the admissions of the Plaintiff.

3 The Court's finding also ignores a key provision in the Judgment. the Judgment allows  
4 Ms. Visser to pay off her share of the Lapham debt in one of two ways. First, she could simply  
5 pay off her share by making the payments to the Featherston Trust Account, with those funds  
6 being applied to the debt through the escrow company. Second, upon the successful subdivision  
7 of the property, she could use Lot 2 as collateral to refinance her portion of the debt, thereby  
8 removing Mr. Visser's obligations for that debt. As to this latter option, the specific language in  
9 the Judgment is found at page 4, paragraph A(5), and states, in relevant part:

11 The parties ***shall (upon subdivision of the property as described***  
12 ***above) to thereupon divide the debt between Plaintiff and***  
13 ***Defendants using the respective Parcels 1 and 2 of the platted***  
14 ***property as collateral for each party's respective share of the***  
15 ***Lapham obligation*** and thereby releasing and extinguishing any  
16 joint liability of Plaintiff Douglas Visser and Defendant, Vicki  
17 Visser on the Lapham debt.

18 (Ex. 17) (*emphasis added*).

19 The unrefuted evidence at the hearing establishes that Ms. Visser was prepared to do  
20 exactly this – split the debt - but that Mr. Visser refused to allow Lot 2 to be used as collateral  
21 until Ms. Visser performed tasks to which she was not obligated. Simply because the debt was  
22 not paid in full does not resolve this issue. Rather, the Court must also consider Vicki's right, as  
23 set forth in this unambiguous judgment, to use Lot 2 as collateral to refinance her share of the  
24 Lapham debt, and Douglas' refusal to allow her to do so. The Court's failure to consider this  
25 portion of the Judgment constitutes error.

The Defendants request that the Court reconsider its decisions, and make specific  
findings as the damages suffered by the Plaintiff on account of the Defendants failure to satisfy

1 all of the conditions of the Judgment, and relate those to the loss of the Defendants' entire  
2 investment. Only upon a resolution of whether this is an unconscionable result can this matter  
3 be fully resolved. The Defendants submit that such a result is clearly unconscionable.

4 Rather than require a forfeiture, the Court is free to fashion an equitable remedy. The  
5 Defendants assert that they are entitled to title to Lot 2, and that they can repay Mr. Visser for the  
6 \$30,000 that he paid to Mr. Lapham on Vicki's behalf. In the alternative, the Court could order  
7 that Lot 2 be sold, and that Ms. Visser receive any funds that exceed the damages suffered and  
8 proved by Mr. Visser. Judicial sale is a remedy recognized as available to the Court in these  
9 situations. *Walker v. Nunnenkamp*, 84 Idaho 485, 498, 373 P.2d 559, 567 (1962); *Thomas v.*  
10 *Klein*, 99 Idaho 105, 111, 577 P.2d 1153, 1159 (1978); *Sullivan v. Burcaw*, 35 Idaho 755, 208 P.  
11 841, 844 (1922).

## 12 II. MOTION FOR STAY

13  
14 The Defendants also request that the Court stay its order requiring the Defendants to  
15 vacate the property by August 7, 2015, as well as any execution upon the Judgment, including  
16 the taking of any action on the Writ of Possession. If the Court denies the Defendants' Motion  
17 for Reconsideration, then the Defendants intend to immediately appeal. If the Court allows the  
18 Defendants to be removed from the Premises and their personal property sold, then even if the  
19 Defendants prevail on appeal they will have lost Lot 2 and their crushing business. The  
20 consequences to the Defendants cannot be overstated.

21  
22 The Court has the authority to issue a stay pending appeal pursuant to Rule 13(b)(14) of  
23 the Idaho Appellate Rules.

1  
2 DATED this 20<sup>th</sup> day of July, 2015.

3 BERG & McLAUGHLIN, CHTD.

4  
5 By: 

6 Toby McLaughlin

7 Attorneys for the Defendant/Petitioner  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE OF SERVICE

On July 20<sup>th</sup>, 2015, I caused copies of the foregoing document to be served by the following methods on the parties listed below as follows, which is the last known address for the listed party:

Margaret Williams, Esq.  
P.O. Box 283  
Ponderay, ID 83852

- ☐ By Hand Delivery  
☐ By U.S. Mail  
☐ By Overnight Mail  
☒ By Facsimile Transmission

*Attorney for the Defendants*

Brent C. Featherston  
FEATHERSTON LAW FIRM, CHTD.  
113 South Second Ave.  
Sandpoint, ID 83864

- ☐ By Hand Delivery  
☐ By U.S. Mail  
☐ By Overnight Mail  
☒ By Facsimile Transmission

*Attorneys for the Plaintiff/Respondent*

  
Tricia Sturgis

1 TOBY McLAUGHLIN, ISB No. 7405  
2 Berg & McLaughlin, Chtd.  
3 414 Church Street, Ste 203  
4 Sandpoint, ID 83864  
5 Telephone: (208)263-4748  
6 Facsimile: (208)263-7557

7 *Attorneys for Defendants*

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  

IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

NO. CV-2013-1045

DOUGLAS VISSER, a married man as to his  
sole and separate property,

Plaintiff

vs.

AUTO ALLEY, LLC, an Idaho limited liability  
company, CALVIN VISSER and VICKI  
VISSER, as individuals in their capacity as  
Members and/or Managers of Auto Alley, LLC,

Defendant.

NOTICE OF HEARING

RE: MOTION FOR RECONSIDERATION  
AND MOTION FOR STAY OF  
EXECUTION OF JUDGMENT

Date: August 5, 2015

Time: 3:30 p.m.

Place: Bonner County Courthouse

Judge: Barbara Buchanan

NOTICE IS HEREBY GIVEN that the Defendant will bring on for hearing its Motion for  
Reconsideration and Stay of Execution of Judgment in the above-entitled matter on the 5<sup>th</sup> day of  
August, 2015, at the hour of 3:30 p.m., or as soon thereafter as counsel may be heard, in a  
courtroom of the above-entitled courthouse before the Honorable Judge Barbara Buchanan.

DATED this 20<sup>th</sup> day of July, 2015

BERG & McLAUGHLIN, Attorneys at Law

By: 

Toby McLaughlin  
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

On July 20<sup>th</sup>, 2015, I caused copies of the foregoing document to be served by the following methods on the parties listed below as follows, which is the last known address for the listed party:

Margaret Williams, Esq.  
P.O. Box 283  
Ponderay, ID 83852

*Attorney for the Defendants*

- ☐ By Hand Delivery  
☐ By U.S. Mail  
☐ By Overnight Mail  
☒ By Facsimile Transmission

Brent C. Featherston  
FEATHERSTON LAW FIRM, CHTD.  
113 South Second Ave.  
Sandpoint, ID 83864

*Attorneys for the Plaintiff/Respondent*

- ☐ By Hand Delivery  
☐ By U.S. Mail  
☐ By Overnight Mail  
☒ By Facsimile Transmission

*Tricia Sturgis*  
Stephanie Allen  
*Tricia Sturgis*

ORIGINAL

**FEATHERSTON LAW FIRM, CHTD.**

BRENT C. FEATHERSTON, ISB# 4602

Attorney at Law

113 S. Second Avenue

Sandpoint, ID 83864

(208) 263-6866

(208) 263-0400 (Fax)

brent@featherstonlaw.com

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man )  
as to his sole and separate property, )

Plaintiff, )

vs. )

AUTO ALLEY, LLC, an Idaho )  
limited liability company, CALVIN )  
VISSER and VICKI VISSER, as )  
individuals and in their capacity as )  
Members and/or Managers of )  
Auto Alley, LLC, )

Defendants. )

CASE NO. CV-2013-1045

**SECOND  
MEMORANDUM OF  
FEES AND COSTS**

Pursuant to Rule 54 and 11 of the Idaho Rules of Civil Procedure and Idaho Code §12-120, §12-121 and §12-123, the Plaintiff Douglas Visser submits and files the following Memorandum of Fees and Costs in the above-captioned matter:

**COSTS AS A MATTER OF RIGHT PURSUANT TO RULE 54(d)(1)(C):**

Trial Exhibit copies:

Reasonable costs of preparation of exhibits (700 @ .15) \$ 105.00

TOTAL Costs as a Matter of Right..... \$ 105.00

**DISCRETIONARY COSTS:**

Copies (62 at .15 each)..... 9.30

Postage..... 3.98

Panhandle Escrow – Modification Fee..... 50.00

TOTAL Discretionary Costs ..... \$ 63.28

**TOTAL DISCRETIONARY COSTS AND COSTS AS A  
MATTER OF RIGHT PURSUANT TO IRCP 54(d)(1)(C).....** \$ 168.28

**ATTORNEY FEES:**

Brent C. Featherston	68.35 hours at \$250.00 per hour	\$ 17,087.50
Brent C. Featherston	00.25 hours at no charge	62.50
Paralegal	15.75 hours at \$ 90.00 per hour	\$ 1,417.50

**SUBTOTAL FEES:** \$ 18,567.50

(Less “no charge” time) -62.50

**TOTAL ATTORNEY’S FEES:** \$ 18,505.00

**RECAPITULATION:**

TOTAL COSTS	\$ 168.28
TOTAL FEES:	\$ <u>18,505.00</u>

**AMOUNT BILLED TO DATE:** \$ 18,673.28

The amounts set forth herein and on the attached Featherston Law Firm, Chtd. Slip Listing billing summary do not include the time anticipated to review and respond to counsel’s anticipated objections to this Memorandum, nor to notice the matter for hearing or appear at hearing on a Motion for Allowance of Fess and Costs. I estimate those additional amounts at five (5) hours or \$1,250.00 for a total fees and costs of \$19,923.28.

The foregoing statement of costs and attorney fees actually incurred by Plaintiff Douglas Visser in this action is correct and in compliance with Rule 54(d) of the Idaho Rules of Civil Procedure. The foregoing statement of attorney fees is supported by the Affidavit of Brent C. Featherston, filed herewith, pursuant to Rule 54(e) of the Idaho Rules of Civil Procedure.

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

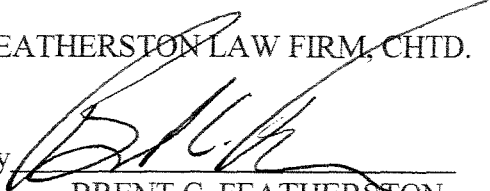


This Memorandum of Fees and Costs is filed pursuant to Court Order as Plaintiff is the prevailing party under the Court's Memorandum Decision filed July 6, 2015.

DATED this 20<sup>th</sup> day of July, 2015.

FEATHERSTON LAW FIRM, CHTD.

By

  
BRENT C. FEATHERSTON  
Attorney for Douglas Visser,  
Plaintiff

STATE OF IDAHO     )  
                                  ) ss:  
County of Bonner     )

BRENT C. FEATHERSTON, being first duly sworn, upon oath deposes and says:

That I am the attorney for the above-named Plaintiff, Douglas Visser, that I have read the contents of the foregoing Memorandum of Costs and Attorney Fees; that to the best of my knowledge and belief, the items therein are true and correct, and that the costs claimed are in compliance with Rule 54(d)(5), Idaho Rules of Civil Procedure, and that the items in the above bill have been reasonably and necessarily incurred in this action related to the Plaintiff's Motion for Writ of Possession and Quiet Title. The attorney fees and costs represented herein are dated from May 6, 2014, to July 20, 2015, for an actual total award herein of \$18,673.28, plus estimated additional fees post filing of the Memorandum of Fees and Costs of \$1,250.00 (additional five hours) for a total of \$19,923.28.

Further, I certify, pursuant to I.R.C.P. 54(e)(3) that the fees and costs incurred meet the following criterion:

(A) The time and labor required: Significant due to a high volume of documents and related accounting issues arising from the posture of the case.

FEATHERSTON LAW FIRM, CHTD.  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

(B) The novelty and difficulty of the questions: Significant for the reasons stated above.

(C) The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law: Significant, and I have over 22 years practical experience in this type of complex litigation.

(D) The prevailing charges for like work: The charges set forth above are reasonable and consistent with charges of other similarly experienced or qualified attorneys.

(E) Whether the fee is fixed or contingent: The fees charged were hourly fixed fee, not contingent.

(F) The time limitations imposed by the client or the circumstances of the case: Significant due to the volume of documents and issues raised or submitted by Defendants.

(G) The amount involved and the results obtained: While the amount involved is significant, the position of Defendants prohibits resolution of the case requiring trial of the case. The results obtained were very favorable.

(H) The undesirability of the case: There are many attorneys who refuse to take this type of case for the reasons discussed above.

(I) The nature and length of the professional relationship with the client. This is the first case for Douglas Visser.

(J) Awards in similar cases: In cases of which there are ten (10) years of a rental occupation with little to no documents or agreements, it is unusual to achieve full success on a claim, as occurred in this instance.

(K) The reasonable cost of automated legal research (Computer Assisted Legal Research) if the court finds it was reasonably necessary in preparing a party's case: N/A

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

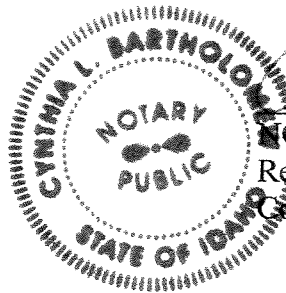
(L) Any other factor which the court deems appropriate in the particular case: None


DATED this 20<sup>th</sup> day of July, 2015.



BRENT C. FEATHERSTON

SUBSCRIBED AND SWORN TO before me this 20<sup>th</sup> day of July, 2015, by Brent C. Featherston.



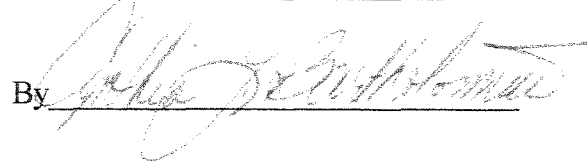
  
NOTARY PUBLIC - State of Idaho  
Residing at Corona, ID  
Commission expires 7-15-2020

### CERTIFICATE OF SERVICE

I hereby certify that on the 20<sup>th</sup> day of July, 2015, I caused a true and correct copy of the foregoing document to be served upon the following person in the following manner:

D. Toby McLaughlin, Esq.  
BERG & McLAUGHLIN, CHTD.  
414 Church Street, Suite 203  
Sandpoint, ID 83864

- ☐ U.S. Mail, Postage Prepaid
- ☐ Overnight Mail
- ☐ Hand delivered
- ☒ Facsimile No. (208) 263-7557
- ☐ Other: \_\_\_\_\_

By 

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

7/20/2015  
10:34 AM

Featherston Law Firm, Chtd.  
Slip Listing

Page 1

Selection Criteria

Slip.Transaction Dat 5/1/2014 - 7/20/2015  
Slip.Classification Open  
Clie.Selection Include: VisserDoug.BCF.CV  
Slip.Transaction Typ 1 - 1

Rate Info - identifies rate source and level

Slip ID	Dates and Time	User Activity	Units	Rate	Slip Value
	Posting Status	Client	DNB Time	Rate Info	
	Description	Reference		Bill Status	
59279	TIME	B. Featherston	0.25	250.00	62.50
5/6/2014		Tele. Conf. w/	0.00	T@13	
Billed	G:32137	6/10/2014 VisserDoug.BCF.CV			
Telephone conference with Margaret					
59315	TIME	B. Featherston	2.25	250.00	562.50
5/21/2014		Review	0.00	T@13	
Billed	G:32137	6/10/2014 VisserDoug.BCF.CV			
Review Motion re: Interference with Judgment; Meet with client; Prepare for Hearing; Attend Hearing					
59461	TIME	Angie Jones	0.33	90.00	30.00
5/27/2014		Other	0.00	T@13	
Billed	G:32137	6/10/2014 VisserDoug.BCF.CV			
Prepare correspondence to Margaret Williams; Prepare Order					
59466	TIME	Angie Jones	0.17	90.00	15.00
5/28/2014		Other	0.00	T@13	
Billed	G:32137	6/10/2014 VisserDoug.BCF.CV			
Finalize/Mail Conference with client concerning: Client Correspondence					
59715	TIME	B. Featherston	0.50	250.00	125.00
6/6/2014		Tele. Conf. w/	0.00	T@13	
Billed	G:32194	7/3/2014 VisserDoug.BCF.CV			
Telephone conferences with Margaret Williams; telephone conference with client					
59730	TIME	B. Featherston	0.60	250.00	150.00
6/10/2014		Tele. Conf. w/	0.00	T@13	
Billed	G:32194	7/3/2014 VisserDoug.BCF.CV			
Telephone conference with Margaret Williams re crusher; telephone call to Doug Visser; telephone call to Margaret Williams					
59737	TIME	B. Featherston	0.25	250.00	62.50
6/11/2014		Correspondence	0.00	T@13	
Billed	G:32194	7/3/2014 VisserDoug.BCF.CV			
Email Correspondence to Margaret re					

7/20/2015  
10:34 AM

Featherston Law Firm, Chtd.  
Slip Listing

Page 2

Slip ID	Dates and Time	User	Units	Rate	Slip Value
	Posting Status	Activity	DNB Time	Rate Info	
	Description	Client		Bill Status	
		Reference			
	ingress/egress				
59998	TIME	B. Featherston	1.25	250.00	312.50
6/18/2014		Office Confer	0.00	T@13	
Billed	G:32194	7/3/2014 VisserDoug.BCF.CV			
Office Conference with Margaret Williams and Rex Finney and Joe Lapham					
60024	TIME	B. Featherston	1.00	250.00	250.00
6/24/2014		Office Confer	0.00	T@13	
Billed	G:32194	7/3/2014 VisserDoug.BCF.CV			
Office Conference with Clients					
60387	TIME	B. Featherston	0.25	250.00	62.50
7/7/2014		Tele. Conf. w/	0.00	T@13	
Billed	G:32357	8/5/2014 VisserDoug.BCF.CV			
Telephone conference with Margaret					
60401	TIME	B. Featherston	0.50	250.00	125.00
7/11/2014		Office Confer	0.00	T@13	
Billed	G:32357	8/5/2014 VisserDoug.BCF.CV			
Office Conference with Counsel re: Calculation of pay off					
60417	TIME	B. Featherston	0.25	250.00	62.50
7/17/2014		Tele. Conf. w/	0.25	T@13	
Billed	G:32357	8/5/2014 VisserDoug.BCF.CV		No Charge	
Telephone conference with Client					
60440	TIME	B. Featherston	0.25	250.00	62.50
7/24/2014		Correspondence	0.00	T@13	
Billed	G:32357	8/5/2014 VisserDoug.BCF.CV			
Email to Panhandle re: Calculation					
60515	TIME	B. Featherston	0.35	250.00	87.50
7/21/2014		Office Confer	0.00	T@13	
Billed	G:32357	8/5/2014 VisserDoug.BCF.CV			
Office Conference with Doug re: Calculation of Escrow					
60857	TIME	B. Featherston	0.35	250.00	87.50
8/12/2014		Correspondence	0.00	T@13	
Billed	G:32541	9/3/2014 VisserDoug.BCF.CV			
Correspondence					
60899	TIME	B. Featherston	0.75	250.00	187.50
8/25/2014		Office Confer	0.00	T@13	
Billed	G:32541	9/3/2014 VisserDoug.BCF.CV			
Office Conference with Rex and Margaret					
60983	TIME	B. Featherston	1.80	250.00	450.00
8/27/2014		Review	0.00	T@13	
Billed	G:32541	9/3/2014 VisserDoug.BCF.CV			

7/20/2015  
10:34 AM

Featherston Law Firm, Chtd.  
Slip Listing

Page 3

Slip ID	Dates and Time	User Activity	Units	Rate	Slip Value
	Posting Status	Client	DNB Time	Rate Info	
	Description	Reference		Bill Status	
	Review highlighted Phase I; review file re rehearing issue; office conference with Doug; correspondence to counsel				
61038	TIME	B. Featherston	0.20	250.00	50.00
8/29/2014		Tele. Conf. w/	0.00	T@13	
Billed	G:32733	10/1/2014 VisserDoug.BCF.CV			
Telephone conference with Rex and Email					
63329	TIME	B. Featherston	0.70	250.00	175.00
12/22/2014		Office Confer	0.00	T@13	
Billed	G:33251	1/2/2015 VisserDoug.BCF.CV			
Office Conference Doug					
64895	TIME	B. Featherston	1.25	250.00	312.50
3/24/2015		Other	0.00	T@13	
Billed	G:33728	4/6/2015 VisserDoug.BCF.CV			
Draft Motion for Quiet Title; Draft Affidavit					
65049	TIME	Cynthia B.	0.20	90.00	18.00
3/10/2015		Tele. Conf. w/	0.00	T@13	
Billed	G:33728	4/6/2015 VisserDoug.BCF.CV			
Telephone conference with Court re hearing on Motion for Entry of Final Judgment; calendar					
65119	TIME	Cynthia B.	3.25	90.00	292.50
3/27/2015		Tele. Conf. w/	0.00	T@13	
Billed	G:33728	4/6/2015 VisserDoug.BCF.CV			
Telephone conferences with Doug; emails with counsel; receipt and review of Motion for Contempt; prepare Notice of Hearing; prepare Amended Notice of Hearing; telephone conference with Josh Hickey at Berg & McLaughlin; scan and email Motion to BCF					
65122	TIME	Cynthia B.	0.10	90.00	9.00
3/30/2015		Tele. Conf. w/	0.00	T@13	
Billed	G:33728	4/6/2015 VisserDoug.BCF.CV			
Telephone conference with Judge's office					
65421	TIME	B. Featherston	0.40	250.00	100.00
4/3/2015		Tele. Conf. w/	0.00	T@13	
Billed	G:34068	5/5/2015 VisserDoug.BCF.CV			
Telephone conference with Sylvia at Judge's Chambers; telephone conference with client					
65676	TIME	Cynthia B.	0.25	90.00	22.50
4/3/2015		Tele. Conf. w/	0.00	T@13	
Billed	G:34068	5/5/2015 VisserDoug.BCF.CV			
Telephone conference with Sylvia; telephone conference with Doug; prepare Amended Notice of Hearing					

7/20/2015  
10:34 AM

Featherston Law Firm, Chtd.  
Slip Listing

Page 4

Slip ID	Dates and Time	User	Units	Rate	Slip Value
	Posting Status	Activity	DNB	Rate Info	
	Description	Client	Time	Bill Status	
		Reference			
65844	TIME	Cynthia B.	0.10	90.00	9.00
4/15/2015		Review	0.00	T@13	
Billed	G:34068	5/5/2015			
	Review Orders and calendar new hearing	VisserDoug.BCF.CV			
66110	TIME	B. Featherston	2.00	250.00	500.00
5/12/2015		Review	0.00	T@13	
Billed	G:34234	6/2/2015			
	Review Pleadings; Office Consult w/ Doug/Hearing Preparation	VisserDoug.BCF.CV			
66131	TIME	B. Featherston	4.50	250.00	1125.00
5/18/2015		Review	0.00	T@13	
Billed	G:34234	6/2/2015			
	Review Pleadings; Draft Responses and Affidavit of Counsel	VisserDoug.BCF.CV			
66257	TIME	Angie Jones	0.20	90.00	18.00
5/21/2015		Other	0.00	T@13	
Billed	G:34234	6/2/2015			
	Post Hearing; Prepare Correspondence to Client	VisserDoug.BCF.CV			
66260	TIME	Angie Jones	0.25	90.00	22.50
5/21/2015		Prepare	0.00	T@13	
Billed	G:34234	6/2/2015			
	Prepare Subpoenas for filing; Fax Service to Counsel	VisserDoug.BCF.CV			
66395	TIME	Cynthia B.	0.40	90.00	36.00
5/27/2015		Other	0.00	T@13	
Billed	G:34234	6/2/2015			
	Serve subpoenas on Jeff Eich and Cheryl Piehl	VisserDoug.BCF.CV			
66417	TIME	Cynthia B.	0.20	90.00	18.00
5/12/2015		Draft	0.00	T@13	
Billed	G:34234	6/2/2015			
	Draft Authorization for Escrow File	VisserDoug.BCF.CV			
66421	TIME	Cynthia B.	0.00	90.00	0.00
5/13/2015		Tele. Conf. w/	0.00	T@13	
Billed	G:34234	6/2/2015			
	Telephone conference with PES re	VisserDoug.BCF.CV			
66422	TIME	Cynthia B.	0.10	90.00	9.00
5/13/2015		Tele. Conf. w/	0.00	T@13	
Billed	G:34234	6/2/2015			
	Telephone conference with PES re DOT & PN	VisserDoug.BCF.CV			
66424	TIME	B. Featherston	9.00	250.00	2250.00
5/29/2015		Other	0.00	T@13	
Billed	G:34234	6/2/2015			
	Trial Prep; Attend Hearing	VisserDoug.BCF.CV			

7/20/2015  
10:34 AM

Featherston Law Firm, Chtd.  
Slip Listing

Page 5

Slip ID	Dates and Time	User Activity	Units	Rate	Slip Value
	Posting Status	Client	DNB Time	Rate Info	
	Description	Reference		Bill Status	
66426	TIME	Cynthia B.	0.30	90.00	27.00
5/14/2015		Prepare	0.00	T@13	
Billed	G:34234	6/2/2015 VisserDoug.BCF.CV			
Prepare Subpoenas					
66427	TIME	B. Featherston	8.00	250.00	2000.00
5/28/2015		Prep. for Court	0.00	T@13	
Billed	G:34234	6/2/2015 VisserDoug.BCF.CV			
Preparation for court; Attend Hearing					
66438	TIME	Cynthia B.	0.40	90.00	36.00
5/18/2015		Draft	0.00	T@13	
Billed	G:34234	6/2/2015 VisserDoug.BCF.CV			
Draft Affidavit of Counsel in Support of Reply Memo					
66442	TIME	Cynthia B.	2.00	90.00	180.00
5/19/2015		Revise	0.00	T@13	
Billed	G:34234	6/2/2015 VisserDoug.BCF.CV			
Revise Subpoenas; serve PES and Treasurer; mark and copy exhibits					
66446	TIME	B. Featherston	0.25	250.00	62.50
5/27/2015		Tele. Conf. w/	0.00	T@13	
Billed	G:34234	6/2/2015 VisserDoug.BCF.CV			
Telephone conference with Sheryl @ Treasurer's office re: testimony					
66450	TIME	B. Featherston	3.25	250.00	812.50
5/27/2015		Prep. for Court	0.00	T@13	
Billed	G:34234	6/2/2015 VisserDoug.BCF.CV			
Preparation for court; tele conf w/ Rex Finney re: testimony; Review PEC Account; Tele conf w/ Jackie; Research res judicata & forfeiture defenses					
66462	TIME	B. Featherston	0.75	250.00	187.50
5/22/2015		Conference w/	0.00	T@13	
Billed	G:34234	6/2/2015 VisserDoug.BCF.CV			
Conference with Rex Finney; Tele Conf w/ Client re: Settlement Offer					
66469	TIME	B. Featherston	1.75	250.00	437.50
5/21/2015		Prep. for Court	0.00	T@13	
Billed	G:34234	6/2/2015 VisserDoug.BCF.CV			
Preparation for court; Conference w/ Client; Tele conf w/ Subpoenaed witnesses; Court Appearance					



7/20/2015  
10:34 AM

Featherston Law Firm, Chtd.  
Slip Listing

Page 6

Slip ID	Dates and Time	Posting Status	Description	User Activity	Client Reference	Units DNB	Time	Rate Rate Info	Bill Status	Slip Value
66474	5/19/2015	TIME	Billed	G:34234	6/2/2015	Cynthia B. Prepare	VisserDoug.BCF.CV	1.00 0.00	90.00 T@13	90.00
Prepare file for hearings										
66478	5/20/2015	TIME	Billed	G:34234	6/2/2015	Cynthia B. Prepare	VisserDoug.BCF.CV	0.40 0.00	90.00 T@13	36.00
Prepare Exhibit List										
66481	5/20/2015	TIME	Billed	G:34234	6/2/2015	Cynthia B. Other	VisserDoug.BCF.CV	1.00 0.00	90.00 T@13	90.00
Calendar new hearing date; amend all subpoenas and prepare subpoena for Rex Finney; serve subpoenas										
66482	5/28/2015	TIME	Billed	G:34234	6/2/2015	Cynthia B. Revise	VisserDoug.BCF.CV	0.50 0.00	90.00 T@13	45.00
Revise Exhibit List; add additional exhibits to list										
66487	5/20/2015	TIME	Billed	G:34234	6/2/2015	B. Featherston Conference w/	VisserDoug.BCF.CV	1.10 0.00	250.00 T@13	275.00
Conference with Jackie @ PEC; Review & issue amended subpoenas; review accounting fro Jackie										
66493	5/19/2015	TIME	Billed	G:34234	6/2/2015	B. Featherston Conference w/	VisserDoug.BCF.CV	1.50 0.00	250.00 T@13	375.00
Conference with Jeff Eich reL Loan Refinance; Witness Preparation; Review Documents & Pleadings; Serve Subpoena for Trial										
66494	5/19/2015	TIME	Billed	G:34234	6/2/2015	B. Featherston Research	VisserDoug.BCF.CV	1.50 0.00	250.00 T@13	375.00
Review Documents & Prepare w/ Doug for Hearing										
66495	5/19/2015	TIME	Billed	G:34234	6/2/2015	B. Featherston Draft	VisserDoug.BCF.CV	1.10 0.00	250.00 T@13	275.00
Draft & File Motion to Strike Affidavit of Joe Lapham; Conference w/ Jackie @ Pan Escrow Co; Conference w/ Cheryl @ Treasurer's Office										

7/20/2015  
10:34 AM

Featherston Law Firm, Chtd.  
Slip Listing

Page 7

Slip ID	Dates and Time	User	Units	Rate	Slip Value
	Posting Status	Activity	DNB Time	Rate Info	
	Description	Client		Bill Status	
		Reference			
66987	TIME	B. Featherston	2.50	250.00	625.00
6/8/2015		Review	0.00	T@13	
Billed	G:34527	7/1/2015 VisserDoug.BCF.CV			
Review Exhibits, notes, etc; Draft Post Trial Brief					
66992	TIME	B. Featherston	0.50	250.00	125.00
6/8/2015		Review	0.00	T@13	
Billed	G:34527	7/1/2015 VisserDoug.BCF.CV			
Review Notes; Obtain missing exhibits; Briefing					
66994	TIME	B. Featherston	1.75	250.00	437.50
6/9/2015		Other	0.00	T@13	
Billed	G:34527	7/1/2015 VisserDoug.BCF.CV			
Hearing Prep/Briefing					
67000	TIME	B. Featherston	3.25	250.00	812.50
6/10/2015		Research	0.00	T@13	
Billed	G:34527	7/1/2015 VisserDoug.BCF.CV			
Research, Revise and Finalize Post Hearing Brief					
67030	TIME	B. Featherston	0.50	250.00	125.00
6/19/2015		Research	0.00	T@13	
Billed	G:34527	7/1/2015 VisserDoug.BCF.CV			
Research Reply Brief					
67032	TIME	B. Featherston	2.50	250.00	625.00
6/21/2015		Draft	0.00	T@13	
Billed	G:34527	7/1/2015 VisserDoug.BCF.CV			
Draft Reply Brief; Research re: jurisdiction					
67047	TIME	Cynthia B.	1.00	90.00	90.00
6/3/2015		Filing	0.00	T@13	
Billed	G:34527	7/1/2015 VisserDoug.BCF.CV			
Post Trial File Maintenance					
67059	TIME	Cynthia B.	0.20	90.00	18.00
6/12/2015		Filing	0.00	T@13	
Billed	G:34527	7/1/2015 VisserDoug.BCF.CV			
File Brief with Clerk of Court; fax to counsel					
67068	TIME	B. Featherston	1.00	250.00	250.00
6/22/2015		Draft	0.00	T@13	
Billed	G:34527	7/1/2015 VisserDoug.BCF.CV			
Draft Reply Brief					
67081	TIME	B. Featherston	5.25	250.00	1312.50
6/23/2015		Draft	0.00	T@13	
Billed	G:34527	7/1/2015 VisserDoug.BCF.CV			
Draft Reply Brief; Research					

7/20/2015  
10:34 AM

Featherston Law Firm, Chtd.  
Slip Listing

Page 8

Slip ID	Dates and Time	User Activity	Units	Rate	Slip Value
	Posting Status	Client	DNB Time	Rate Info	
	Description	Reference		Bill Status	
67099	TIME	Cynthia B.	0.10	90.00	9.00
	6/19/2015	Draft	0.00	T@13	
	Billed				
	G:34527	7/1/2015 VisserDoug.BCF.CV			
	Draft outline of rebuttal brief				
67176	TIME	Cynthia B.	0.20	90.00	18.00
	7/8/2015	Tele. Conf. w/	0.00	T@13	
	WIP	VisserDoug.BCF.CV			
	Telephone conference with Doug; email				
	Memorandum Decision				
67187	TIME	Cynthia B.	0.40	90.00	36.00
	7/7/2015	Review	0.00	T@13	
	WIP	VisserDoug.BCF.CV			
	Receipt and review of Memorandum Decision;				
	calendar deadlines; scan and email (and text) to				
	Brent re Memorandum Decision				
67189	TIME	Cynthia B.	0.50	90.00	45.00
	7/10/2015	Draft	0.00	T@13	
	WIP	VisserDoug.BCF.CV			
	Draft Orders pursuant to Memorandum Decision				
67193	TIME	Cynthia B.	0.20	90.00	18.00
	7/13/2015	Correspondence	0.00	T@13	
	WIP	VisserDoug.BCF.CV			
	Correspondence to Judge with Writ of Protection				
67209	TIME	B. Featherston	0.40	250.00	100.00
	7/7/2015	Review	0.00	T@13	
	WIP	VisserDoug.BCF.CV			
	Review Memorandum Decision				
67210	TIME	B. Featherston	0.75	250.00	187.50
	7/13/2015	Review	0.00	T@13	
	WIP	VisserDoug.BCF.CV			
	Review Memorandum Decision and counsel's				
	Reply Brief				
67211	TIME	B. Featherston	0.35	250.00	87.50
	7/13/2015	Prepare	0.00	T@13	
	WIP	VisserDoug.BCF.CV			
	Prepare Order and Writ of Possession				
67212	TIME	B. Featherston	0.25	250.00	62.50
	7/14/2015	Review	0.00	T@13	
	WIP	VisserDoug.BCF.CV			
	Review counsel's proposed Order Releasing Lis				
	Pendens				

7/20/2015  
10:34 AM

Featherston Law Firm, Chtd.  
Slip Listing

Page 9

Slip ID	Dates and Time	User Activity	Units	Rate	Slip Value
	Posting Status	Client	DNB Time	Rate Info	
	Description	Reference		Bill Status	
67213	TIME	B. Featherston	0.50	250.00	125.00
7/15/2015		Correspondence	0.00	T@13	
WIP		VisserDoug.BCF.CV			
	Correspondence to Judge re Objections to Writ				
67214	TIME	B. Featherston	0.25	250.00	62.50
7/17/2015		Revise	0.00	T@13	
WIP		VisserDoug.BCF.CV			
	Revise Writ of Possession and correspondence to Judge				
67215	TIME	B. Featherston	1.00	250.00	250.00
7/20/2015		Review	0.00	T@13	
WIP		VisserDoug.BCF.CV			
	Review file; review pleadings; review and revise Memorandum of Fees and Costs				
67216	TIME	Cynthia B.	2.00	90.00	180.00
7/20/2015		Review	0.00	T@13	
WIP		VisserDoug.BCF.CV			
	Review file; draft Memorandum of Fees and Costs; draft Affidavit of Fees and Costs; copy, fax and file Memorandum of Fees and Costs				
Grand Total					
		Billable	84.10		18505.00
		Unbillable	0.25		62.50
		Total	84.35		18567.50

7/20/2015  
10:37 AM

Featherston Law Firm, Chtd.  
Slip Listing

Page 1

Selection Criteria

Slip.Transaction Dat 5/1/2014 - 7/20/2015  
Slip.Classification Open  
Clie.Selection Include: VisserDoug.BCF.CV  
Slip.Transaction Typ 2 - 2

Rate Info - identifies rate source and level

Slip ID Dates and Time Posting Status Description	User Activity Client Reference	Units DNB Time	Rate Rate Info Bill Status	Slip Value
56361 EXP 12/5/2013 Billed Postage	G:31129 12/5/2014 1/3/2014 Cynthia B. \$Expenses VisserDoug.BCF.CV	0.46	4.00	1.84
59473 EXP 5/28/2014 Billed Postage: \$1.17 Copies: \$2.25	G:32137 6/10/2014 Angie Jones \$Expenses VisserDoug.BCF.CV	1	3.42	3.42
59756 EXP 6/19/2014 Billed Panhandle Escrow Co., Inc. - Modification Fee	G:32194 7/3/2014 B. Featherston \$Expenses VisserDoug.BCF.CV	1	50.00	50.00
66451 EXP 5/19/2015 Billed Copies of Exhibits	G:34234 6/2/2015 Cynthia B. \$Expenses VisserDoug.BCF.CV	632	0.15	94.80
66483 EXP 5/28/2015 Billed Copies of additional exhibits	G:34234 6/2/2015 Cynthia B. \$Expenses VisserDoug.BCF.CV	68	0.15	10.20
67060 EXP 6/12/2015 Billed Copies	G:34527 7/1/2015 Cynthia B. \$Expenses VisserDoug.BCF.CV	22	0.15	3.30
67196 EXP 7/13/2015 WIP Postage	VisserDoug.BCF.CV Cynthia B. \$Expenses	2	0.485	0.97
67217 EXP 7/20/2015 WIP Copies	VisserDoug.BCF.CV Cynthia B. \$Expenses	25	0.15	3.75

7/20/2015  
10:37 AM

Featherston Law Firm, Chtd.  
Slip Listing

Page 2

Slip ID Dates and Time Posting Status Description	User Activity Client Reference	Units DNB Time	Rate Rate Info Bill Status	Slip Value
Grand Total				
	Billable	0.00		168.28
	Unbillable	0.00		0.00
	Total	0.00		168.28

ORIGINAL

**FEATHERSTON LAW FIRM, CHTD.**  
BRENT C. FEATHERSTON, ISB NO. 4602  
Attorney at Law  
113 S. Second Avenue  
Sandpoint, ID 83864  
(208) 263-6866  
(208) 263-0400 (Fax)  
brent@featherstonlaw.com

2015 JUL 28 AM 11:40

FILE  


Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man )  
as to his sole and separate property, )

Plaintiff, )

vs. )

AUTO ALLEY, LLC, an Idaho )  
limited liability company, CALVIN )  
VISSER and VICKI VISSER, as )  
individuals and in their capacity as )  
Members and/or Managers of )  
Auto Alley, LLC, )

Defendants. )

CASE NO. CV-2013-1045

**PLAINTIFF'S APPLICATION FOR  
PREJUDGMENT ATTACHMENT AND  
ORDER TO SHOW CAUSE/TEMPORARY  
RESTRAINING ORDER**

**(I.C. § 8-502)**

COMES NOW the undersigned counsel for and on behalf of the Plaintiff, Douglas Visser, by and through his attorney of record, Brent C. Featherston, Featherston Law Firm, Chtd., and based upon the record, hereby moves the Court pursuant to Idaho Code § 8-502 for an Order to Show Cause/Temporary Restraining Order directing the Defendants, Auto Alley, LLC, Calvin Visser and Vicki Visser, to appear and show cause why a Writ of Attachment should not issue attaching to any and all assets owned by the Defendants, but specifically including Defendants' interest (legal or equitable) held in that certain personal property located on the real property known as Lots 1 and 2 of the Plat of Ponderay Place

**PLAINTIFF'S APPLICATION FOR PREJUDGMENT ATTACHMENT AND  
ORDER TO SHOW CAUSE/TEMPORARY RESTRAINING ORDER (I.C. § 8-502) - 1**

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

304

according to the Plat recorded July 11, 2014, in Book 11 of Plats, Page 20, recorded as Instrument No. 861642.

Pursuant to Idaho Code § 8-502(a), and based upon the record before the Court, Plaintiff alleges and requests relief as follows:

1. The Defendants are indebted to the Plaintiff for the sum of attorney's fees and costs incurred in this matter to be determined by the Court after hearing. However, the fact of said indebtedness is, without question, the Court has ordered the award of attorney's fees, only the amount of said fees remain. Upon entry of Judgment, the Plaintiff is entitled to attach any and all assets of the Defendants for collection of said attorney's fees judgments together with any prejudgment or post-judgment interest as the Court may deem appropriate until Judgment is satisfied.

2. Based upon the record before the Court, Plaintiff alleges that the indebtedness of the Defendants to Plaintiff is not secured by any asset, security interest or lien and that the personal property currently upon Plaintiff's property is the only known assets of the Defendants subject to attachment. The lack of security is as a result of the Defendants' conduct, but in any event, is not as a result of any act or conduct of the Plaintiff.

3. The Defendants are alleged on information and belief to be non-residents of the State of Idaho, Bonner County; and

4. This Application for Prejudgment Attachment is not sought nor prosecuted with the intent to hinder, delay or defraud any creditor of the Defendants known to the Plaintiff.

**FEATHERSTON LAW FIRM, CHD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

**PLAINTIFF'S APPLICATION FOR PREJUDGMENT ATTACHMENT AND  
ORDER TO SHOW CAUSE/TEMPORARY RESTRAINING ORDER (I.C. § 8-502) - 2**



In compliance with Idaho Code § 8-502(b), the Plaintiff ask this Court to (upon examination of the record) issue an Order directing the Defendants, through their counsel of record, to show cause, if any they have, why such Writ of Attachment should not issue.

Further, the Order shall fix a date and time for hearing, but not sooner than five (5) days from the issuance of said Order and should direct the manner in which Plaintiff shall serve said Order to Show Cause upon the Defendants. Said Order shall further inform the Defendants of their right to file affidavits on their behalf before the Court, and/or to appear and present testimony on their behalf at the time of any such hearing, or that Defendants may, prior to such hearing, file with the Court, a written undertaking to stay the issuance of the Writ of Attachment in accordance with the provisions of Idaho Code § 8-506(c), and further advising Defendants that if they fail to appear, Plaintiff will apply to the Court for a Writ of Attachment without further notice to Defendants, and if the Attachment has issued prior to the hearing, the Defendants may apply to the Court to have a hearing set at an earlier date.

DATED this 28<sup>th</sup> day of July, 2015.

FEATHERSTON LAW FIRM, CHTD.

By 

BRENT C. FEATHERSTON  
Attorney for Plaintiff

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

## CERTIFICATE OF SERVICE

I hereby certify that on the 29<sup>th</sup> day of July, 2015, I caused a true and correct copy of the foregoing document to be served upon the following person(s) in the following manner:

D. Toby McLaughlin, Esq.  
BERG & McLAUGHLIN, CHTD.  
414 Church Street, Suite 203  
Sandpoint, ID 83864

- ☐ U.S. Mail, Postage Prepaid
- ☐ Overnight Mail
- ☐ Hand delivered
- ☒ Facsimile No. (208) 263-7557
- ☐ Other: \_\_\_\_\_

By 

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

PLAINTIFF'S APPLICATION FOR PREJUDGMENT ATTACHMENT AND  
ORDER TO SHOW CAUSE/TEMPORARY RESTRAINING ORDER (I.C. § 8-502) - 4

ORIGINAL

**FEATHERSTON LAW FIRM, CHTD.**  
BRENT C. FEATHERSTON, ISB NO. 4602  
Attorney at Law  
113 S. Second Avenue  
Sandpoint, ID 83864  
(208) 263-6866  
(208) 263-0400 (Fax)  
brent@featherstonlaw.com

2015 JUL 28 6:11 45

CLERK

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man )  
as to his sole and separate property, )

Plaintiff, )

vs. )

AUTO ALLEY, LLC, an Idaho )  
limited liability company, CALVIN )  
VISSER and VICKI VISSER, as )  
individuals and in their capacity as )  
Members and/or Managers of )  
Auto Alley, LLC, )

Defendants. )

CASE NO. CV-2013-1045

**MOTION TO ALLOW  
ATTORNEY'S FEES, MOTION TO  
SHORTEN TIME and NOTICE OF  
HEARING**

COMES NOW the undersigned counsel for and on behalf of the Plaintiff, Douglas Visser, by and through his attorney of record, Brent C. Featherston, Featherston Law Firm, Chtd., and moves this Court to allow those fees and costs and enter Judgment according to the Plaintiff's Second Memorandum of Fees and Costs filed July 20, 2015.

This Motion is based upon the Idaho Rules of Civil Procedure and specifically I.R.C.P. Rule 54 and upon the Court's Memorandum Decision and Order, as well as applicable statutes and Idaho case law.

**MOTION TO ALLOW ATTORNEY'S FEES, MOTION  
TO SHORTEN TIME and NOTICE OF HEARING - 1**

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

DATED this 28<sup>th</sup> day of July, 2015.

FEATHERSTON LAW FIRM, CHTD.

By 

BRENT C. FEATHERSTON  
Attorney for Plaintiff

### MOTION TO SHORTEN TIME

COMES NOW the undersigned counsel for and on behalf of the Plaintiff, Douglas Visser, by and through his attorney of record, Brent C. Featherston, Featherston Law Firm, Chtd., and moves this Court to shorten the time for hearing Plaintiff's Motion to Allow Attorney's Fees.

The Defendants' Motion to Allow Attorney's Fees is scheduled for hearing on August 5, 2015, at 3:30 p.m. Pursuant to I.R.C.P. 7(b)(3) this Motion and the Notice of Hearing are to be served no later than fourteen (14) days prior to the time specified for hearing. Pursuant to I.R.C.P. Rule 6(b) and 7(b), this Court may alter the time prescribed.

There is no prejudice to the Defendants by altering the time period prescribed by Rule and allowing the Motion to Allow Attorney's Fees to proceed on seven (7) days' notice as opposed to a fourteen (14) day notice.

The Court is asked to take judicial notice of the file herein and to shorten time for hearing on the Plaintiff's Motion to Allow Attorney's Fees for the reasons set forth in the Motion and as may be presented at hearing on this Motion.

The undersigned further gives notice of intent to present further evidence and testimony at hearing.

MOTION TO ALLOW ATTORNEY'S FEES, MOTION  
TO SHORTEN TIME and NOTICE OF HEARING - 2

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

DATED this 28<sup>th</sup> day of July, 2015.

FEATHERSTON LAW FIRM, CHTD.

By [Signature]  
BRENT C. FEATHERSTON  
Attorney for Plaintiff

**NOTICE OF HEARING**

YOU ARE HEREBY NOTIFIED that the above Motion to Allow Attorney's Fees will be called up for hearing at the Bonner County Courthouse, 215 S. First Avenue, Sandpoint, ID 83864 on the 5<sup>th</sup> day of August, 2015, at the hour of 3:30 p.m. before the Honorable Barbara Buchanan or as soon thereafter as counsel may be heard.

DATED this 29<sup>th</sup> day of July, 2015.

FEATHERSTON LAW FIRM, CHTD.

By [Signature]  
BRENT C. FEATHERSTON  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that on the 29<sup>th</sup> day of July, 2015, I caused a true and correct copy of the foregoing document to be served upon the following person(s) in the following manner:

D. Toby McLaughlin, Esq.  
BERG & McLAUGHLIN, CHTD.  
414 Church Street, Suite 203  
Sandpoint, ID 83864

- ☐ U.S. Mail, Postage Prepaid  
☐ Overnight Mail  
☐ Hand delivered  
☒ Facsimile No. (208) 263-7557  
☐ Other: \_\_\_\_\_

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

By [Signature]

**MOTION TO ALLOW ATTORNEY'S FEES, MOTION  
TO SHORTEN TIME and NOTICE OF HEARING - 3**

ORIGINAL

**FEATHERSTON LAW FIRM, CHTD.**  
BRENT C. FEATHERSTON, ISB NO. 4602  
Attorney at Law  
113 S. Second Avenue  
Sandpoint, ID 83864  
(208) 263-6866  
(208) 263-0400 (Fax)  
brent@featherstonlaw.com

2015 JUL 23 PM 11 45

*[Handwritten signature]*

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man )  
as to his sole and separate property, )  
Plaintiff, )

CASE NO. CV-2013-1045

vs. )

**PLAINTIFF'S RESPONSE TO  
DEFENDANTS' MOTION FOR  
RECONSIDERATION AND FOR  
STAY OF JUDGMENT**

AUTO ALLEY, LLC, an Idaho )  
limited liability company, CALVIN )  
VISSER and VICKI VISSER, as )  
individuals and in their capacity as )  
Members and/or Managers of )  
Auto Alley, LLC, )  
Defendants. )

COMES NOW the undersigned counsel for and on behalf of the Plaintiff, Douglas Visser, by and through his attorney of record, Brent C. Featherston, Featherston Law Firm, Chtd., and hereby responds to Defendants' Motion for Reconsideration and for Stay of Execution of Judgment as follows:

**I. PROCEDURAL HISTORY/STATEMENT OF FACTS**

Defendants' Motion for reconsideration essentially restates the same arguments raised at the trial proceedings and in post-trial briefing:

**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR  
RECONSIDERATION AND FOR STAY OF EXECUTION OF JUDGMENT - I**

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

a. That the Court should have denied Douglas the relief sought because it was inequitable and, specifically, that said relief is an inequitable forfeiture of the Defendants' investment of \$236,118.77;

b. That the Court erred by not making a finding that Douglas "prevented" Vicki from paying her share of the Lapham mortgage;

c. Requesting a stay of execution pending appeal (despite the fact that no appeal has yet been filed.

All said issues were discussed, addressed or dismissed by the Court in its Memorandum Decision. For the reasons set forth below, the Court should deny Defendants' Motion for Reconsideration and Stay of Execution.

## II. ARGUMENT

"When deciding the motion for reconsideration, the District Court must apply the same standard of review that the Court applied when deciding the original order that is being reconsidered. In other words, if the original order was a matter within the trial court's discretion, then so is the decision to grant or deny the motion for reconsideration." Fragnella v. Petrovich, 153 Idaho 266, 276, 281 P.3d 103, 113 (2012).

"Review of a District Court's findings of fact is limited to ascertaining whether the evidence supports the findings of fact and whether the findings of fact support the conclusions of law." Electrical Wholesale Supply Company, Inc. v. Nielson, 136 Idaho 814, 819, 41 P.3d 242, 247 (2001).

The Nielson court also noted that "the District Court's Findings of Fact are reviewed with an abuse of discretion standard".

“A trial court does not abuse its discretion if it (1) correctly perceives the issue as discretionary, (2) acts within the bounds of discretion and applies the correct legal standards, and (3) reaches the decision through an exercise of reason. La Bella Vita, LCC v. Shuler, 215 W.L. 231749 (2015).

The Defendants have failed to demonstrate to this Court a basis for reconsideration of the Court’s Memorandum Decision. The Court’s Memorandum Decision on the issues raised in this Motion to Reconsider are ones that are Findings of Fact and are discretionary. The Court exercised its discretion as mandated by Idaho. This Court should deny Defendants’ Motion for Reconsideration.

**A. Did the Court err by refusing to consider the Defendants’ equitable arguments?**

At the outset, these equitable arguments were briefed extensively in the post-trial briefing, but never raised as affirmative defenses in the pretrial briefing in this case. Arguably, this Court could have, and perhaps should have, declined to consider equitable relief not pled prior to the trial.

Regardless, this Court did consider the testimony and counsel’s post trial claims of equitable relief and rejected them as inapplicable to the Judgment at issue. Memorandum Decision, P. 8. Even assuming, arguendo, that Defendants’ equity claim of forfeiture is timely pled and should be considered, the Court should, at most, make findings on Defendants’ Motion for Reconsideration that reject the equitable claims.

**1. Defendants’ equitable claims are barred because of unclean hands.**

In order to claim equitable relief, the party must have done equity and appear before the court with clean hands.



“..... ‘When an adequate remedy at law is available, the court may not resort to principles of equity.’.....Equity will not afford relief to plaintiffs where they have passed up an adequate remedy at law.” Farmers National Bank v. Wickham Pipeline Construction, 114 Idaho 565, 569, 759 P.2d 71, 75 (1988); quoting Austin v. North American Forrest Products, 656 F.2d 1076, 1089 (5<sup>th</sup> Cir.1981).

This Court’s Judgment entered in February, 2014, provided Defendants with opportunities and remedies at law under the judgment to obtain Lot 2. Defendants inexplicably chose to pass up, ignore or neglect those opportunities. They cannot avail themselves of equitable relief at this juncture.

Further, “.....where inadequate remedy at law has been lost by negligence or lack of diligence, equity will not interfere, since equity is not solicitous for those who sleep on their rights.” Id.; quoting American Surety Company of New York v. Murphy, 152 Fla. 862, 13 So.2d 442, 443 (Fla.1943).

Whether by neglect or lack of diligence, Defendants failed to pursue their legal remedy and come before this court with unclean hands. Their equitable claims are barred by laches and unclean hands and the principle that in order to seek equitable relief, they must have acted equitably during the course of this matter.

**2. There is no case law to support application of equitable forfeiture argument to the terms of a Judgment.**

Despite repeated argument, the Defendants have not presented a single case that applies equitable forfeiture to bar the legal effect of a judgment. Each case cited by the Defendants is a contract case in which the vendor and vendee have an enforceable contract and vendee has paid substantial amounts toward purchase of land, defaulted and faced the

**PLAINTIFF’S RESPONSE TO DEFENDANTS’ MOTION FOR  
RECONSIDERATION AND FOR STAY OF EXECUTION OF JUDGMENT - 4**

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

331

inequitable loss or forfeiture of the equity in the property created by vendee's payments if the court did not intervene. None of that cited cases applied this principle to the terms of a court order or judgment where no property interest was acquired, possessed or owned, unless or until the terms of the judgment were fully complied with by the Defendants. Defendants have failed to present the Court with legal authority for application of equitable relief to a Court order or Judgment that plainly and clearly spells out the consequences of Defendants' default or failure to perform.

**3. The Defendants fail to demonstrate an unconscionable or inequitable outcome and cannot demonstrate unfair benefit to Douglas.**

Defendants argue that it is reversible error for the Court to have declined to find forfeiture and/or an unconscionable penalty where Defendants, Vicki Visser, Calvin Visser and Auto Alley, LLC, have paid more than \$236,000.00 toward performance of the Judgment. Exhibit H is an illustrative exhibit Vicki Visser testified to being her calculation of the costs incurred by her towards performance on the Judgment. Exhibit H itemizes \$149,000.00 in payments towards the Joe Lapham debt. Defendants assert that the Court's Decision results in an unfair benefit to Douglas of \$236,000.00. This assertion bears closer scrutiny. Of the \$236,000.00 asserted by Defendants, \$149,000.00 was applied to interest, late fee and principal on the Lapham note at Panhandle Escrow. A total of \$45,418.77 was paid by Defendants toward 2009, 2010, 2011, 2012 and 2013 taxes. (This includes \$1,000.00 payments in October and November and the \$1,000.00 paid late in June, 2014.)

Defendants also assert as an inequitable forfeiture and benefit to Douglas the following:

**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR  
RECONSIDERATION AND FOR STAY OF EXECUTION OF JUDGMENT - 5**

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

- \$2,000.00 plat cost, though Douglas had no need or intent to complete the earlier started plat, if not for this settlement and judgment and Defendants have not demonstrated an increased value as a result of platting the property;
- The Court ordered \$5,000.00 rent for of April, 2014, when the Defendants failed to timely move out by March 31 though this was essentially a penalty not sought by Douglas;
- Survey costs of \$500.00, which were never part of the judgment or mediated settlement and which appear to have been unnecessary since the property had been platted and lot lines marked;
- gravel placed on the property at cost of \$16,000.00, to repair damage caused while moving out or to enable traffic while moving out during the wettest time of the year, several months after the settlement was reached;
- \$2,400.00 for a Phase I Environmental Report necessary because of Defendants' occupancy the past 10 years;
- \$3,000.00 for leveling of the property after Defendants damaged the land during move out during the muddiest and wettest season, several months after the mediated settlement was reached; and,
- \$12,800.00 for equipment rental which Vicki testified was necessary to move the car parts from Lot 1 to Lot 2.

These items total \$41,700.00, but Defendants fail to explain how these costs directly confer an inequitable benefit on Douglas as opposed to being simple business expenses of Defendants' operation and agreement to move. For example, Douglas did not want rent for April, 2014. He asked the Court to impose the penalties of the Judgment for Defendants' failure to comply at that time. The survey was unnecessary and a unilateral decision by the Defendants. The gravel, Phase I, leveling and equipment rental are all costs of the Defendants' business operation. The Defendants caused damage to the property and were required either by the Judgment or by legal or equitable principles to restore the premises and any damage they caused. The equipment rental costs of \$12,800.0 associated with

**FEATHERSTON LAW FIRM, CHITD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR  
RECONSIDERATION AND FOR STAY OF EXECUTION OF JUDGMENT - 6**

moving from the property are business costs that are associated with their business operation conferring no benefit on Douglas.

As the Court can see, there is a disingenuous aspect to the Defendants' equitable argument of forfeiture when \$41,700.00 of the \$236,000.00 were costs associated with Defendants' business operation, damages to the premises or costs of moving from the premises as Court ordered. Regardless, absent a benefit conferred to Douglas, there is not a forfeiture argument to be raised from that approximate \$40,000.00 expenditure.

With regard to the Lapham escrow payments and taxes, the Defendants conveniently ignore two (2) important facts. First, the Lapham debt began in 2006 as a balance of \$111,500.00 when the Defendants took occupancy. By the time this case was filed and the matter was brought to mediation in August, 2013, that balance had climbed to over \$296,000.00, an increase of \$185,000.00 totally offsetting the amounts paid by Defendants in 2014 toward the Lapham debt and county taxes. See Plaintiff's Exhibit 27. In order to effectuate the Mediated Settlement Agreement, the parties were further forced to negotiate with Mr. Lapham an extension of the note and a six percent (6%) increase in the balance, bringing that total to \$308,000.00. See: Plaintiff's Exhibit 30 and Plaintiff's Exhibit 3.

By virtue of the Defendants' default or failure to pay rent, taxes and/or service the Lapham note from 2005 until 2013, the Lapham obligation encumbering the property owned by Douglas Visser increased by \$197,327.44 (\$111,500 to \$308,827.44 as of February 13, 2014).

In response to this, Defendants assert that it is an unfair forfeiture that they have paid \$149,000.00 to the Lapham obligation (albeit untimely and incomplete) and \$45,418.77 in

back taxes (while under threat of tax deed proceedings) for a total of \$194,418.77, fully \$3,000 less than the debt increase caused by Defendants.

The second issue, as ignored in Defendants' Motion to Reconsider, is the utter lack of rent payments during the period of 2005 through 2014, a period of almost ten (10) years and the un rebutted testimony of Douglas Visser that the fair rental value of the property including buildings and all of Lot 1 is \$72,000.00 per year.

Third, Defendants' argument fails to account for the significant credit damage sustained by Douglas as a result of Defendants' failure to service the Lapham note. The testimony of Jeff Eich, again un rebutted, established that under these circumstances, Douglas had few options for refinancing of Lapham note which was under threat of foreclosure in November and December, 2014, and as a result thereof, Douglas paid \$18,200.00 in loan origination fees. Douglas also was required to bring current utilities and LID fees used by the Defendants, but not paid. Douglas also paid the first half of 2014 property taxes for both Lots 1 and 2 as part of the financing conditions, again, not paid by the Defendants despite their occupancy.

This sort of analysis of the fair rental value of Defendants' occupancy as an offset to any equitable claim of forfeiture is precisely the analysis found in and applied by the Idaho Supreme Court and trial court in Williams v. Havens, 92 Idaho 439, 444 P.2d 132 (1968). In that case, the court then found that "the cancelation of the contract and restoration of the premises to the Plaintiffs (Williams) as prayed for in the Complaint do not result in any penalty to the Defendants (Havens) or in any unjust enrichment to the Plaintiff" with the trial court going on to find that there was no forfeiture by permitting the vendor/seller to retain

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR  
RECONSIDERATION AND FOR STAY OF EXECUTION OF JUDGMENT - 8**

\*Licensed in Idaho & Washington

payments made by the occupant as an offset for the fair rental value. Williams v. Havens, 92 Idaho at 442.

Incidentally, the Williams v. Havens decision is also instructive in regard to Defendants' next argument that Douglas prevented Vicki Visser from refinancing the loan by refusing to deliver a deed. See discussion below.

Before leaving this issue, it is also worth addressing Defendants' implied argument that they are "entitled to the reasonable value of the loss of Lot 2". Defendants argue that "there is no evidence, however, that the damages suffered by the Plaintiff for these alleged defaults reasonably equivalent to the loss of Lot 2 to the Defendants, or the more than \$230,000.00 that the Defendants have invested." Memorandum in Support of Motion for Reconsideration, p.4, ll.2-4.

Plaintiff has already addressed the fallacious \$230,000.00 claim of investment. Implicit in the argument quoted above is the Defendants' assertion that they are entitled to Lot 2 and/or its value and that the failure to award them relief works a forfeiture of their interests in Lot 2.

It should be noted that counsel for the Defendants admitted on the record that this Mediated Settlement Agreement essentially sought to honor an unenforceable, verbal agreement more than ten (10) years ago between Douglas Visser and Vicki Visser at the time of their divorce. That verbal agreement provided that if certain performance was accomplished by Vicki on other items (which items sought to partially restore Douglas to his condition prior to this ill fated ten year rental arrangement), that the Plaintiff, Douglas Visser, would complete a plat of the property and convey the back lot to her. It was admitted

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR  
RECONSIDERATION AND FOR STAY OF EXECUTION OF JUDGMENT - 9**

\*Licensed in Idaho & Washington

by counsel for Defendants that this verbal agreement is unenforceable both for reasons of statute of fraud and statute of limitations.

Against this backdrop, the Mediated Settlement Agreement and ultimate Judgment did not convey to Vicki any property interest in Lot 2 unless Vicki performed the requirements of the Judgment. It is undisputed that she did not do so and, therefore, she and the other Defendants never acquired any legal title or equitable interest in Lot 2.

For the reasons set forth herein, the Court should deny the Defendants' Motion to Reconsider on the basis of Defendants' equitable argument.

**B. Should the Trial Court reconsider that Douglas did not prevent Vicki from paying the Lapham debt and performing on the terms of the Court's Judgment.**

Defendants argue in their Motion to Reconsider that Douglas admitted at hearing that he refused to transfer title to Vicki until completion of a new road. This misstates the testimony. As the Court will recall, defense counsel asked Douglas on the stand whether he had made the statement that he would not deed Lot 2 until a new road was built. Douglas responded that that was not how it was stated and that the question did not accurately reflect the context of his discussion with Vicki. Douglas went on to testify that he had one (1) or two (2) conversations with Vicki after August 29<sup>th</sup> in which he asked her when the road would be completed and when she would perform the other conditions set forth in the Judgment. Douglas also testified that he was not aware until late in 2014 how much Vicki had failed to pay of the Lapham debt, or even that she was in default on the Judgment for not paying her share of the Lapham debt. Douglas testified that he became aware of this when Lapham threatened to foreclose on the note in November.

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR  
RECONSIDERATION AND FOR STAY OF EXECUTION OF JUDGMENT - 10**

The Defendants' counsel also argues that counsel for Douglas "demanded additional tasks as a condition for transfer of title". Memorandum in Support of Defendants' Motion for Reconsideration, p.6. This argument misstates the content of Exhibit 4 and the testimony of attorney, Margaret Williams, and Joe Lapham and his attorney, Rex Finney, concerning events surrounding this correspondence. The August 27<sup>th</sup> correspondence memorializes discussion between the attorneys, Margaret Williams, Rex Finney and counsel for Douglas, Brent Featherston. Nowhere in the correspondence does it insert "additional tasks" or demands. The August 27<sup>th</sup> letter does, however, reiterate demand that the Defendants comply with the Judgment by paying their share of the Lapham debt (at that point almost two [2] months overdue). The only discussion of the Quitclaim Deed is found in paragraph 2 of the August 27<sup>th</sup> letter in which it reiterates a demand that Defendants perform on the Judgment (and Settlement Agreement) before the deed will be "delivered". In fact, the letter proposes to have a Quitclaim prepared, signed and held in escrow or in Plaintiff's counsel's file until performance was complete. No additional tasks or conditions are placed on the deed except for the conditions of performance contained in the Judgment.

Although the August 27<sup>th</sup> letter goes on to discuss and memorialize prior discussions about road construction, repair to the parking lot and building and completion of the cleanup discussed in the Phase I, it also discusses the privacy fence and water hookups, which are not contemplated in the Settlement Agreement or Judgment. It should be noted that in the August 27<sup>th</sup> letter, items 3 through 8 are in no way made as conditions of the deed to Lot 2 being delivered. Item number 2 makes clear that the Lot 2 Deed will be delivered upon the Defendants' performance of the "requirements of our agreement". Plaintiff's Exhibit 4.

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington



Furthermore, the Defendants and their counsel ignored the August 27<sup>th</sup> letter and simply refused to respond from that date forward.

In similar circumstances found in Williams v. Havens, *supra*, the Idaho Supreme Court noted as follows: "Moreover, when a contract is still executory, a party who is not in default, and who is ready, able and willing to perform, may, by serving notice on the other party, requiring him to perform within a reasonable time, make such performance a condition of his own further, necessary performance. A tender is not required where the other party has placed it beyond his power to perform, or has shown or indicated that he will not or cannot perform." Williams v. Havens, 92 Idaho 439, 443, 444 P.2d 132, 136 (1968) [citations omitted]. The Idaho Supreme Court went on to note that it is implicit from the evidence that the vendors, Williams, were at all times ready, willing and able to perform [by delivery of a deed] conditioned upon Havens [vendees] having fulfilled their payment obligations.

Likewise, in this instance, counsel is asserting that Vicki should have received the deed to Lot 2 even though she had failed to perform the conditions precedent set forth in the Judgment to her receipt of a deed to Lot 2. The August 27<sup>th</sup> letter, by Plaintiff's counsel, set clearly Douglas' intent to perform by delivery of a deed to Lot 2 upon Defendants' fulfillment of the requirements of the Judgment and/or Mediated Settlement Agreement.

Since the Defendants declined or refused to do so, they have no factual basis to assert Douglas in any way interfered with Defendants' payment of the Lapham debt.

Defense counsel engages in a fictitious interpretation of the Judgment whereby they argue that upon platting of the property, Defendants were entitled to a deed of Lot 2. Defendants' counsel bases this argument upon a paragraph that discusses division of the

property and then division of the debt using the respective parcel to secure each party's respective share of the Lapham debt. Counsel argues that Vicki was prepared to do so, but that Douglas refused to allow Lot 2 to be used as collateral.

There is absolutely no evidence to support this assertion and, in fact, the evidence at trial established that Mr. Lapham refused in June and July to allow the division of the debt as originally contemplated in the Mediated Settlement Agreement and in paragraph A-5 of the February, 2014, Judgment. This is evidenced by Exhibit 2 and Exhibit 30 in which Mr. Lapham and/or his counsel refused to divide the debt or to release either lot from the original loan. This is also evidenced in Plaintiff's Exhibit 3, the Amendment Modification and Correction of the Deed of Trust, which was signed by all the parties, including Mr. Lapham on May 7<sup>th</sup> and July 1<sup>st</sup> and which contains in paragraph 3 which does not divide the debt, but rather agrees only that upon fifty percent (50%) of the loan being paid, Lapham will foreclosure first against Lot 1 and then against Lot 2 in the event of failing to satisfy the remaining fifty percent (50%) of the debt.

Defense counsel's assertion that Vicki was entitled to Lot 2 upon subdivision of the property is absurd and directly contrary to the language of the modification entered into and signed by Vicki in May, 2014, approximately three (3) months after this Court entered its Judgment. While it was the parties' contemplation at mediation, and even after Mr. Finney's August, 2013, letter rejecting the idea of splitting the debt, that intention always required Mr. Lapham's cooperation, which he declined to provide. Mr. Lapham insisted upon language, through his counsel, that maintained a security lien against both Lots 1 and 2 as is reflected in the recorded Modification dated and recorded July 2, 2014.

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR  
RECONSIDERATION AND FOR STAY OF EXECUTION OF JUDGMENT - 13**

543

There is absolutely no basis for the Court to reconsider its finding that Douglas Visser did not interfere with or prevent Vicki from paying off the Lapham mortgage. Simple logic and rudimentary understanding of real estate transactions defies this argument. As indicated in previous briefing, Vicki and Mr. Lapham need only have opened escrow and demanded a payoff quote with proof that Vicki had otherwise performed all of the conditions of the Judgment in order to receive a deed to Lot 2.

Indeed, the Defendants needed to have responded to counsel's August 27<sup>th</sup> letter in some fashion, if only to state their objection to the "demands" by Douglas counsel, in order to protect their rights under the Judgment. They did not do so. Four (4) months later and under threat of foreclosure from Mr. Lapham, through his counsel, Douglas had no other choice but to pay off the balance of the Lapham note, including the significant portions unpaid by the Defendants.

There is no basis to reconsider the Court's ruling and the finding that Douglas Visser did not prevent Vicki from paying off the mortgage should be upheld.

### **C. Defendants' Motion for Stay**

In what can only be described as frivolous, Defendants request this Court to enter a stay order of the Court's Writ of Possession to vacate the property by August 7, 2015. Defendants cite the Court to Rule 13 of the Idaho Appellate Rules. A cursory reading of Rule 13 of the Idaho Appellate Rules indicates that in civil actions, the District Court has the power and authority to rule upon certain motions including motions to stay execution "during the pendency on an appeal". I.A.R. 13(b)

There is no appeal filed in this action, therefore, I.A.R. 13 is simply inapplicable. Similarly, Idaho Rules of Civil Procedure, Rule 62, is clear that execution or other

proceedings to enforce a judgment may issue immediately upon entry of the judgment unless the court in its discretion and on such conditions for the security of the adverse party as are proper, otherwise directs. I.R.C.P. 62(a)(2014)

Subsection (d) of Rule 62 provides that any stay after filing of the appeal is governed by the Idaho Appellate Rules and, specifically, Rule 13, as discussed above.

There is no motion before the Court for a stay of execution under Rule 62, as the Defendants did not cite that rule. Citation to Idaho Appellate Rule 13 is misplaced, as there is no appeal filed in this case.

The Court is asked to deny Defendants' misplaced Motion for Stay of Execution and to award fees and costs.

### III. CONCLUSION

Defendants' Motion to Reconsider and Motion for Stay is misplaced and unfounded. The Defendants simply reassert the same arguments previously rejected by this Court, which should be rejected again, the Motions denied.

The Plaintiff, Douglas Visser, is entitled to an award of attorney's fees and costs pursuant to the terms of the Judgment and as provided by Idaho rule and case law.

DATED this 29<sup>th</sup> day of July, 2015.

FEATHERSTON LAW FIRM, CHTD.

By 

BRENT C. FEATHERSTON  
Attorney for Plaintiff

FEATHERSTON LAW FIRM, CHTD.  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

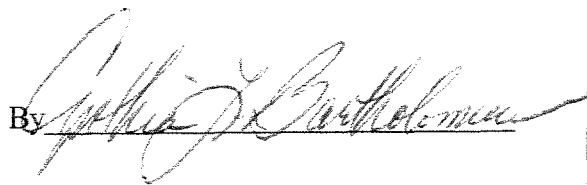
\*Licensed in Idaho & Washington

### CERTIFICATE OF SERVICE

I hereby certify that on the 29<sup>th</sup> day of July, 2015, I caused a true and correct copy of the foregoing document to be served upon the following person(s) in the following manner:

D. Toby McLaughlin, Esq.  
BERG & McLAUGHLIN, CHTD.  
414 Church Street, Suite 203  
Sandpoint, ID 83864

- ☐ U.S. Mail, Postage Prepaid
- ☐ Overnight Mail
- ☐ Hand delivered
- ☒ Facsimile No. (208) 263-7557
- ☐ Other: \_\_\_\_\_

By 

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR  
RECONSIDERATION AND FOR STAY OF EXECUTION OF JUDGMENT - 16

540

ORIGINAL

**FEATHERSTON LAW FIRM, CHTD.**  
BRENT C. FEATHERSTON, ISB NO. 4602  
JEREMY P. FEATHERSTON, ISB NO. 6098  
Attorney at Law  
113 S. Second Avenue  
Sandpoint, ID 83864  
Phone: (208) 263-6866  
Fax: (208) 263-0400

CLERK OF DISTRICT COURT  
COUNTY OF BONNER  
JULY 31, 2015

2015 JUL 31 A 10:24

CLERK OF DISTRICT COURT

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man )  
as to his sole and separate property, )

Plaintiff, )

vs. )

AUTO ALLEY, LLC, an Idaho )  
limited liability company, CALVIN )  
VISSER and VICKI VISSER, as )  
individuals and in their capacity as )  
Members and/or Managers of )  
Auto Alley, LLC, )

Defendants. )

CASE NO. CV-2013-1045

**ORDER TO SHOW CAUSE/  
TEMPORARY RESTRAINING  
ORDER RE: WRIT OF ATTACHMENT**

Based upon the Application submitted by Plaintiff, and good cause appearing as provided  
for under Idaho Code § 8-502, the Court does hereby enter an Order as follows:

**ORDER TO SHOW CAUSE**

Pursuant to Idaho Code § 8-502, et seq. and I.R.C.P. Rule 6(c)(2), the Defendants, Auto  
Alley, LLC, Vicki Visser and Calvin Visser, are hereby ordered to appear and show cause on the  
5<sup>th</sup> day of Aug, 2015, at 3:30 p.m. why a Writ of Attachment should not issue in favor of the  
Plaintiff and against the Defendants' interests, if any, in and to all real property and/or personal

**ORDER TO SHOW CAUSE/TEMPORARY RESTRAINING  
ORDER RE WRIT OF ATTACHMENT - 1**

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

342

property (whether held in legal title or equitable), specifically including, but not limited to, the certain personal property located on the real property known as Lots 1 and 2 of the Plat of Ponderay Place according to the Plat recorded July 11, 2014, in Book 11 of Plats, Page 20, recorded as Instrument No. 861642. At said date and time, Defendants shall show cause why a Writ of Attachment should not issue upon such property pursuant to I.C. §8-502.

The Defendants are hereby informed that they may file an affidavit on their behalf with the Court and/or may appear and present testimony on their behalf at the time of such hearing, or they may at, or prior to, such hearing, file with the Court a written undertaking to stay the issuance of the Writ of Attachment in accordance with the provisions of Idaho Code §8-506(c).

The Defendants are further informed that if they fail to appear or otherwise show cause as set forth herein, Plaintiff will apply to the Court for a Writ of Attachment without further notice to the Defendants.

If attachment has already issued prior to the hearing, the Defendants may apply to the Court to have a hearing set at an earlier date than that date set forth above.

Further, Plaintiff is directed and ordered to serve this Order to Show Cause and the Application of Plaintiff upon the Defendants through their legal counsel as follows:

D. Toby McLaughlin, Esq.  
BERG & McLAUGHLIN, CHTD.  
414 Church Street, Suite 203  
Sandpoint, ID 83864

The Plaintiff shall thereafter cause proof of such service to be filed with the Court prior to said hearing.

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman


113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

**ORDER TO SHOW CAUSE/TEMPORARY RESTRAINING  
ORDER RE WRIT OF ATTACHMENT - 2**

348

DATED this 31 day of July, 2013.

  
HON. BARBARA BUCHANAN

### CERTIFICATE OF SERVICE

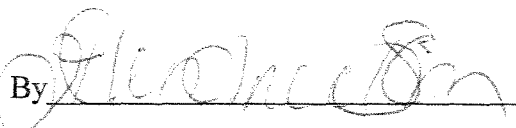
I hereby certify that on the 31 day of July, 2015, I caused a true and correct copy of the foregoing document to be served upon the following person(s) in the following manner:

Brent C. Featherston, Esq.  
FEATHERSTON LAW FIRM CHTD.  
113 S. Second Avenue  
Sandpoint, ID 83864

☐ U.S. Mail, Postage Prepaid  
☐ Overnight Mail  
☐ Hand delivered  
☒ Facsimile No. (208) 263-0400  
☐ Other: \_\_\_\_\_

D. Toby McLaughlin, Esq.  
BERG & McLAUGHLIN, CHTD.  
414 Church Street, Suite 203  
Sandpoint, ID 83864

☐ U.S. Mail, Postage Prepaid  
☐ Overnight Mail  
☐ Hand delivered  
☒ Facsimile No. (208) 263-7557  
☐ Other: \_\_\_\_\_

By 

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

ORDER TO SHOW CAUSE/TEMPORARY RESTRAINING  
ORDER RE WRIT OF ATTACHMENT - 3

349



ORIGINAL

**FEATHERSTON LAW FIRM, CHTD.**  
BRENT C. FEATHERSTON, ISB NO. 4602  
Attorney at Law  
113 S. Second Avenue  
Sandpoint, ID 83864  
(208) 263-6866  
(208) 263-0400 (Fax)  
brent@featherstonlaw.com

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2015 AUG -5 P 4:37

CLERK OF DISTRICT COURT

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man )  
as to his sole and separate property, )

Plaintiff, )

vs. )

AUTO ALLEY, LLC, an Idaho )  
limited liability company, CALVIN )  
VISSER and VICKI VISSER, as )  
individuals and in their capacity as )  
Members and/or Managers of )  
Auto Alley, LLC, )

Defendants. )

CASE NO. CV-2013-1045

**AFFIDAVIT OF SERVICE**

STATE OF IDAHO )  
County of Bonner ) ss:  
County of Bonner )

I, CYNTHIA L. BARTHOLOMEW, being first duly sworn upon oath, depose and  
state as follows:

I am a paralegal for the Featherston Law Firm, Chtd., over the age of 18 and  
competent to testify to the matters contained herein.

On August 4, 2015, I personally hand delivered a copy of the Plaintiff's Application  
for Prejudgment Attachment and Order to Show Cause/Temporary Restraining Order and a

**AFFIDAVIT OF SERVICE - 1**

650

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

copy of the Order to Show Cause/Temporary Restraining Order Re: Writ of Attachment to the above-named Defendants through their legal counsel, as follows:

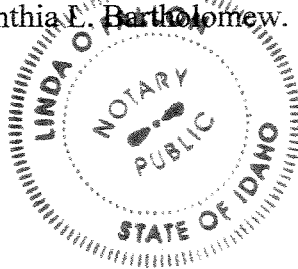
D. Toby McLaughlin, Esq.  
BERG & McLAUGHLIN, CHTD.  
414 Church Street, Suite 203  
Sandpoint, Idaho 83864


Further your affiant sayeth naught.

DATED this 4<sup>th</sup> day of August, 2015.

  
CYNTHIA L. BARTHOLOMEW

**SUBSCRIBED AND SWORN** to before me, a Notary Public, on this 4 day of August, 2015, by Cynthia L. Bartholomew.



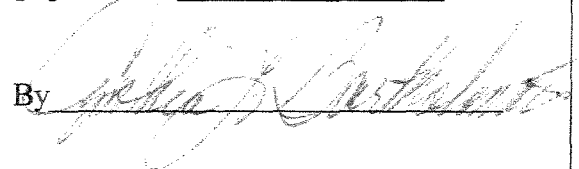
  
Notary Public - State of Idaho  
Residing at Donner Canyon  
Commission expires: 3-29-16

### CERTIFICATE OF SERVICE

I hereby certify that on the 5 day of August, 2015, I caused a true and correct copy of the foregoing document to be served upon the following person(s) in the following manner:

D. Toby McLaughlin, Esq.  
BERG & McLAUGHLIN, CHTD.  
414 Church Street, Suite 203  
Sandpoint, ID 83864

- ☐ U.S. Mail, Postage Prepaid  
☐ Overnight Mail  
☐ Hand delivered  
☒ Facsimile No. (208) 263-7557  
☐ Other: \_\_\_\_\_

By 

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

ORIGINAL

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2015 AUG -5 P 4:36

CLERK OF DISTRICT COURT

**FEATHERSTON LAW FIRM, CHTD.**  
BRENT C. FEATHERSTON, ISB NO. 4602  
Attorney at Law  
113 S. Second Avenue  
Sandpoint, ID 83864  
Phone: (208) 263-6866  
Fax: (208) 263-0400

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man )  
as to his sole and separate property, )

Plaintiff, )

vs. )

AUTO ALLEY, LLC, an Idaho )  
limited liability company, CALVIN )  
VISSER and VICKI VISSER, as )  
individuals and in their capacity as )  
Members and/or Managers of )  
Auto Alley, LLC, )

Defendants. )

CASE NO. CV-2013-1045

**JUDGMENT RE: ATTORNEY'S  
FEES AND COSTS**

JUDGMENT IS ENTERED as follows:

Based upon the Plaintiff's Second Memorandum of Fees and Costs filed July 20, 2015, and there being objections filed by the Defendants, the Plaintiff, Douglas Visser, is awarded Judgment against the Defendants, Auto Alley, LLC, an Idaho limited liability company, CALVIN VISSER and VICKI VISSER, individually, and in their capacity as members and/or managers of Auto Alley, LLC, in the amount \$19,923.28, representing the

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

JUDGMENT RE: ATTORNEY'S FEES AND COSTS - 1

552

fees and costs set forth in the Second Memorandum of Fees and Costs together with estimated fees and costs stated by sworn Affidavit of Counsel.

The Plaintiff's Judgment against the Defendants shall accrue interest at the Judgment rate of 5.375% together with all costs or fees incurred on collection until fully satisfied.

IT IS SO ORDERED and JUDGMENT does hereby enter this 5 day of August, 2015.

  
HON. BARBARA BUCHANAN

#### CERTIFICATE OF MAILING

I hereby certify that on the 7 day of July, 2015, I caused a true and correct copy of the foregoing document to be served upon the following person in the following manner:

Brent C. Featherston, Esq.  
FEATHERSTON LAW FIRM, CHTD.  
113 S. Second Avenue  
Sandpoint, ID 83864

☒ U.S. Mail, Postage Prepaid - 8-10-15  
☐ Overnight Mail  
☐ Hand delivered  
☒ Facsimile No. (208) 263-0400  
☐ Other: \_\_\_\_\_

D. Toby McLaughlin, Esq.  
BERG & McLAUGHLIN, CHTD.  
414 Church Street, Suite 203  
Sandpoint, ID 83864

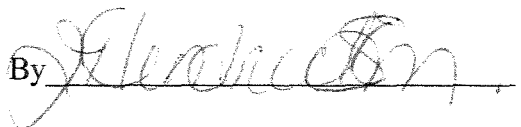
☒ U.S. Mail, Postage Prepaid - 8-10-15  
☐ Overnight Mail  
☐ Hand delivered  
☒ Facsimile No. (208) 263-7557  
☐ Other: \_\_\_\_\_

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

By 

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

**COURT MINUTES**

<b>JUDGE:</b>	<b>BARBARA BUCHANAN</b>	<b>CASE NO.</b>	<b>CV-2013-1045</b>	
<b>REPORTER:</b>	<b>VAL LARSON</b>	<b>DATE:</b>	<b>8-5-15</b>	<b>TIME: 3:30 P.M.</b>
<b>CLERK:</b>	<b>LINDA OPPELT</b>	<b>COURTROOM</b>	<b>1</b>	
<b>DIVISION:</b>	<b>DISTRICT</b>			

**DOUGLAS VISSER**

vs **AUTO ALLEY, LLC, ETAL.**

Plaintiff / Petitioner

Defendant / Respondent

Atty: BRENT FEATHERSTON

Atty: D TOBY MCLAUGHLIN

**SUBJECT OF PROCEEDINGS**

**MOTION FOR RECONSIDERATION  
ORDER TO SHOW CAUSE  
MOTION TO SHORTEN TIME  
MOTION TO ALLOW ATTORNEY'S FEES  
MOTION FOR STAY OF EXECUTION OF JUDGMENT**

INDEX	SPEAKER	PHASE OF CASE
3:31	J	<b>Calls Case</b>
		<b>Present:</b> BRENT FEATHERSTON, TOBY MCLAUGHLIN, VICKI VISSER
	J	CITES MOTIONS.
		START WITH THE MOTION TO RECONSIDER. HAVE READ PLEADINGS.
	TM	MEMORANDUM DECISION – CITES PORTION. FLAWED LEGAL ANALYSIS. THIS TYPE OF ANALYSIS COMES UP IN LAND SALE AGREEMENT.
		GRAVES CASE CITED. WE ARE TALKING ABOUT LIQUID DAMAGES.
3:36		THE COURT FOUND THAT THE DEFENDANT FAILED TO COMPLY WITH THE JUDGMENT.
		-FAILURE TO VACATE- A FEW ITEMS LEFT. WHAT DAMAGE DOES THAT CAUSE DOUGLAS VISSER? NONE.
		USAGE OF THE ROAD – NO DAMAGES THERE.
		DAMAGE TO METAL BUILDING – MR. VISSER ALSO TALKED ABOUT SAND ON THE ROAD. DOUGLAS HAS NO FOUNDATION FOR PROOF OF DAMAGES.
		-FAILURE TO PAY THE LAPHAM DEBT- \$30,000.00 OWED TO MR. LAPHAM. THE CONTRACT ALLOWED TO SPLIT THE DEBT.
		IF FORFEITURE THEN MY CLIENT WILL LOSE OUT ON MONEY PAID.
3:41		CASE CITED BY MR. FEATHERSTON – THE COURT FIGURED OUT THE LOSS IN THAT CASE. THEY DID AN ANALYSIS WHICH THIS COURT HAS NOT DONE.
3:42		MR. VISSER SAID HE WANTED THE ROAD BUILT AND THE PROPERTY TO HAVE A CLEAN BILL OF HEALTH.
3:44		THE PROPERTY NEEDED TO BE SUBDIVIDED. ON JULY 2, 2014 THE PROPERTY WAS SUBDIVIDED.
3:47		THE AMENDED DEED TRUST AND NOTE WAS DONE PRIOR TO THE SUBDIVISION.
3:48		EQUITABLE DEFENSES PRESENTED.
3:50		CITES CASES.
		THIS CASE WAS A LAND SALE AGREEMENT.
3:51	J	MR. FEATHERSTON?
	BF	WILL CORRECT MISSTATEMENT MADE BY MR. MCLAUGHLIN.
		THE AMENDED DEED TRUST WAS SIGNED AFTER THE JUDGMENT.

		THE DEBT WAS NOT GOING TO BE SPLIT.
3:55		2 ARGUMENTS – GRAVES V CUBIC CASE. CONTRACT FORFEITURE.
		I WOULD SUGGEST TO THE COURT – VENDOR-BUYER-SELLER.
		MR. VISSER WILL HONOR A VERBAL DISCUSSION.
4:00		IF YOU CHOSE TO RECONSIDER THE DO A BROAD ANALYSIS.
4:02		DAMAGES- MR. VISSER GAVE THE AMOUNTS. OTHER THINGS WERE BROUGHT TO THE COURT.
4:03		MR. VISSER WANTED COMPLIANCE WITH THE JUDGMENT.
4:06		\$72,000.00 OF RENTAL INCOME IS POSSIBLE PER DOUGLAS VISSER FOR A YEAR THAT IS BEING LOST.
4:08		THE JUDGMENT WAS AND IS NOT BEING COMPLIED WITH.
	J	MR. MCLAUGHLIN?
4:09	TM	THE MODIFICATION OF THE LOAN IS POSSIBLE- THERE WAS A DISPUTE OF HOW MUCH EACH PARTY OWED.
		THE AMENDED CAN NOT OVERRIDE THE JUDGMENT.
		THE AMENDMENT WAS DONE BEFORE THE SUBDIVISION OF THE LOTS.
4:11		ELS V BUTTERFIELD CASE CITED.
4:12		REASONABLE RENTAL VALUABLE NO EVIDENCE GIVEN. NO EXPERT WITNESS DISCLOSURE. THE OWNER CAN ESTIMATE THE VALUE OF THE PROPERTY.
4:14		AT THE DIVORCE SHE IS STRIPPED OF HER PROPERTY RIGHTS.
4:17		WE THINK THERE IS ONLY ABOUT \$30,000.00 OF DAMAGES. WITH THE FORFEITURE MY CLIENT WILL LOSE HER BUSINESS OF WRECKING YARD. THIS THE ONLY WRECKING YARD HERE.
4:21	J	NEED TO MOVE TO THE ORDER TO SHOW CAUSE.
	BF	JUST FOR THE RECORD. MAKING MY OBJECTION TO ANY MOTION TO AMEND THE TESTIMONY AS WELL AS ANY CLAIMS FOR EQUITABLE REMEDIES SUCH AS TO PAY OFF SOME PORTION OF THE DEBT.
	J	<b>NO OBJECTION TO MOTION TO ALLOW ATTORNEY'S FEES FILED.</b>
	TM	<b>NO OBJECTION.</b>
	J	MOVE TO THE ORDER TO SHOW CAUSE.
	BF	THE DEFENDANTS NEED TO VACATE AND NOT LEAVE ANY DAMAGES. ATTACH ASSETS FOR PAYMENT OF THE JUDGMENT. WE ASK THE PREJUDGMENT BE IN THE FORM OF A POST JUDGMENT WITH ATTACHMENT OF THOSE ASSETS.
	J	NO. I WANT TO LEAVE HERE KNOWING EXACTLY WHAT YOU ARE ASKING. THEY ARE TO VACATE BY THE 7 <sup>TH</sup> .
4:24	BF	CORRECT. [CLARIFIES]
4:25	J	OKAY
	TM	PREJUDGMENT WRIT OF ATTACHMENT. NO COMPLIANCE WITH 8-502 CITES. NO AFFIDAVIT IN SUPPORT. SHOULD NOT BE ISSUED.
4:26	J	I NEED TO ISSUE A WRITTEN.
		<b>DENYING MOTION TO RECONSIDER.</b>
		NO UNDERLYING CONTRACT. MR. VISSER OWNED THE PROPERTIES FREE AND CLEAR. MS. VISSER AND SON RAN THE BUSINESS. TAXES WERE NOT PAID.
4:29		CITES WHAT THE COURT LOOKED AT.
4:31		<b>NOT GRANTING A STAY.</b>
	TM	CAN I ASK SOMETHING?
	J	YES
	TM	GOING DOWNSTAIRS TO FILE AN APPEAL. WILL ASK THE APPELLATE COURT FOR A STAY.
	J	WILL SIGN THE ORDER FOR ATTORNEY FEES.
4:33		END
4:34		RESUME
	J	NEED A FINAL JUDGMENT TO APPEAL FROM.

	BF	WILL GIVE YOU A JUDGMENT. DUE BY AUGUST 7 <sup>TH</sup> . STILL WANT THAT?
	J	YES
		SO IT DOESN'T GET THROWN BACK.
4:35		END

TOBY McLAUGHLIN, ISB No. 7405  
Attorney for Appellants  
Berg & McLaughlin, Chtd.  
414 Church Street, Ste 203  
Sandpoint, ID 83864  
Telephone: (208)263-4748  
Facsimile: (208)263-7557  
toby@sandpointlaw.com

2015 JUL 6 PM 5 00

DMH

IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

NO. CV-2013-1045

DOUGLAS VISSER, a married man as to his  
sole and separate property,

**NOTICE OF APPEAL**

Fee Category: L.4.a  
Fee: \$129.00

Respondent,

vs.

AUTO ALLEY, LLC, an Idaho limited liability  
company, CALVIN VISSER and VICKI  
VISSER, as individuals in their capacity as  
Members and/or Managers of Auto Alley, LLC,

Appellants.

**TO: THE ABOVE NAMED RESPONDENT, Douglas Visser, AND THE PARTY'S  
ATTORNEYS, Brent C. Featherston, 113 S. Second Avenue, Sandpoint, ID 83864, AND  
THE CLERK OF THE ABOVE ENTITLED COURT.**

**NOTICE IS HEREBY GIVEN THAT:**

1. The above named appellants, AUTO ALLEY, LLC, CALVIN VISSER and  
VICKI VISSER appeal against the above named respondent to the Idaho Supreme Court from  
the order granting the Plaintiff a Writ of Possession, entered in the above entitled action on the  
day of July 6<sup>th</sup>, 2015, Honorable Judge Buchanan presiding.



1           2.     That the party has a right to appeal to the Idaho Supreme Court, and the  
2 judgments or orders described in paragraph 1 above are appealable orders under and pursuant to  
3 Rules 11(a)(4) and 11(a)(7) I.A.R.

4           3.     The appeal is taken upon matters of law and fact, including: (1) refusing to  
5 consider and resolve the Defendants' claim that the forfeiture granted in favor of the Plaintiff  
6 constitutes an inequitable penalty, as the damages to the Plaintiff from the alleged breach of the  
7 stipulated Judgment results in a penalty to the Defendants, which bears no reasonable relation to  
8 the actual damages suffered by the Plaintiff; and (2) finding that the Plaintiff did not prevent  
9 Vicki Visser from paying her share of the Lapham debt; and (3) the Court having overlooked  
10 the portion of the Judgment that required the parties to split the debt upon the successful  
11 subdivision of the property.

12           4.     The record has not been sealed in whole or in part.

13           5.     (a) The appellant requests a reporter's transcript.

14                   (b) The appellant requests the preparation of the following portions of the  
15 reporter's transcript in hard copy and electronic format: A transcript of the  
16 proceedings from the hearing on the Plaintiff's Motion for Writ of Possession and  
17 Judgment of Quiet Title, heard on April 23, 2014 without a court reporter, the  
18 length of that transcript is estimated to be less than 100 pages. Appellant requests  
19 a transcript of the Defendant's hearing on the Motion Regarding Plaintiff's  
20 Interference with Defendants' Ability to Comply with the Judgment, which was  
21 heard May 21, 2014. Court Reporter Val Larson was present, and the transcript is  
22 estimated to be less than 100 pages. Finally, appellant requests a transcript from  
23 evidentiary hearing on the Defendant's Motion for Contempt and the Plaintiff's  
24  
25

1 Motion for Writ of Possession, which proceedings were reported by Val Larson  
2 on the 28<sup>th</sup> and 29<sup>th</sup> days of May. The length of that transcript is estimated to  
3 exceed 200 pages.

4 6. The appellant requests the clerk's standard record under Rule 28, I.A.R.

5 7. The appellant requests that all exhibits admitted at the hearings on May 28<sup>th</sup> and  
6 29<sup>th</sup> be copied and sent to the Supreme Court.

7 8. I certify:

8 (a) That a copy of this notice of appeal has been served on each reporter of whom  
9 a transcript has been requested as named below at the address set out below:

10 Val Larson  
11 215 South 1<sup>st</sup> Avenue  
12 Sandpoint, ID 83864

13 (b) That the clerk of the district court or administrative agency has been paid the  
14 estimated fee for preparation of the reporter's transcript.


15 (c) That the estimated fee for preparation of the clerk's or agency's record has  
16 been paid.

17 (d) That the appellate filing fee has been paid.

18 (e) That service has been made upon all parties required to be served pursuant to  
19 Rule 20 (and the attorney general of Idaho pursuant to Section 67-1401(1), Idaho  
20 Code.

21 DATED this 5<sup>th</sup> day of August, 2015.


22 BERG & McLAUGHLIN, CHTD.

23  
24 By:   
25 TOBY McLAUGHLIN  
Attorneys for Appellants

# CERTIFICATE OF SERVICE

On August 5, 2015, I caused copies of the foregoing document to be served by the following methods on the parties listed below as follows, which is the last known address for the listed party:

Margaret Williams, Esq. P.O. Box 283 Ponderay, ID 83852	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission
<i>Co-Counsel for the Defendants</i>	
Brent C. Featherston FEATHERSTON LAW FIRM, CHTD. 113 South Second Ave. Sandpoint, ID 83864	<input checked="" type="checkbox"/> By Hand Delivery <input type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission
<i>Attorneys for the Respondent</i>	
Val Larson 215 South 1 <sup>st</sup> Avenue Sandpoint, ID 83864	<input checked="" type="checkbox"/> By Hand Delivery <input type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission
<i>Court Reporter</i>	
State of Idaho Office of the Attorney General 700 W. Jefferson Street, Suite 210 P.O. Box 83720 Boise, Idaho 83720-0010	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission

  
Stephanie Allen

ORIGINAL

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2015 AUG -7 P 2:19

CLERK DISTRICT COURT

**FEATHERSTON LAW FIRM, CHTD.**  
BRENT C. FEATHERSTON, ISB NO. 4602  
Attorney at Law  
113 S. Second Avenue  
Sandpoint, ID 83864  
Phone: (208) 263-6866  
Fax: (208) 263-0400

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man )  
as to his sole and separate property, )

Plaintiff, )

vs. )

AUTO ALLEY, LLC, an Idaho )  
limited liability company, CALVIN )  
VISSER and VICKI VISSER, as )  
individuals and in their capacity as )  
Members and/or Managers of )  
Auto Alley, LLC, )

Defendants. )

CASE NO. CV-2013-1045

**ORDER RE: PLAINTIFF'S  
APPLICATION FOR PREJUDGMENT  
ATTACHMENT AND ORDER TO  
SHOW CAUSE**

This matter came before the Court on August 5, 2015, for hearing on the Plaintiff's Application for Prejudgment Attachment and Order to Show Cause and the Court's Order to Show Cause/Temporary Restraining Order Re: Writ of Attachment issued July 31, 2013.

The Plaintiff was present through counsel, Brent C. Featherston. The Defendant, Vicki Visser, was present with counsel, Toby McLaughlin.

Based upon the record the Court orders as follows:

**ORDER RE: PLAINTIFF'S APPLICATION FOR PREJUDGMENT  
ATTACHMENT AND ORDER TO SHOW CAUSE - 1**

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

1. The Court having entered Judgment Re: Attorney's Fees and Costs at hearing on August 5, 2015, the issue of Pre-Judgment attachment and the Court's Order to Show Cause/Temporary Restraining Order Re: Writ of Attachment is moot and/or no longer applicable. The Court hereby enters an Order granting Plaintiff's request for Post-Judgment Attachment. Plaintiff shall be entitled to a Writ of Attachment and/or Execution upon all of the Defendants' personal property including that personal property currently located upon the real property known as Lots 1 and 2 of the Plat of Ponderay Place, according to the Plat recorded July 11, 2014, in Book 11 of Plats, Page 20, as Instrument No. 861642 in the records of Bonner County, Idaho.

2. Plaintiff's Writ of Execution or Attachment shall direct the Sheriff of Bonner County or such other law enforcement office authorized or empowered by law to cause the Defendants' personal property located on the real property described above to be removed to a safe place for storage and/or crushing, sale, disposition under the Plaintiff's direction with all such funds received to be paid to Plaintiff's counsel and/or the Bonner County Clerk of Court until the Plaintiff's Judgment against Defendants is fully satisfied together with all prejudgment interest and costs accruing.

3. Said Writ of Execution and this Court's Order is subject only to any Stay of Execution that may subsequently enter. *The stay for a period of 14 days upon filing a notice of appeal, pursuant to I.A.R. 13(a), applies.*

IT IS SO ORDERED this 7 day of August, 2015.

  
HON. BARBARA BUCHANAN

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

ORDER RE: PLAINTIFF'S APPLICATION FOR PREJUDGMENT  
ATTACHMENT AND ORDER TO SHOW CAUSE - 2

562

## CERTIFICATE OF MAILING

I hereby certify that on the 7<sup>th</sup> day of August, 2015, I caused a true and correct copy of the foregoing document to be served upon the following person in the following manner:

Brent C. Featherston, Esq.  
FEATHERSTON LAW FIRM, CHTD.  
113 S. Second Avenue  
Sandpoint, ID 83864

☒ U.S. Mail, Postage Prepaid - 8-10-15  
☐ Overnight Mail  
☐ Hand delivered  
☒ Facsimile No. (208) 263-0400  
☐ Other: \_\_\_\_\_

D. Toby McLaughlin, Esq.  
BERG & McLAUGHLIN, CHTD.  
414 Church Street, Suite 203  
Sandpoint, ID 83864

☒ U.S. Mail, Postage Prepaid - 8-10-15  
☐ Overnight Mail  
☐ Hand delivered  
☒ Facsimile No. (208) 263-7557  
☐ Other: \_\_\_\_\_

By *[Signature]*  
*Deputy Clerk.*

FEATHERSTON LAW FIRM, CHTD.  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

ORDER RE: PLAINTIFF'S APPLICATION FOR PREJUDGMENT  
ATTACHMENT AND ORDER TO SHOW CAUSE - 3

563

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2015 AUG -7 A 10: 54

CLERK'S OFFICE COURT

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNER**

**DOUGLAS VISSER, a married man as to his  
sole and separate property,**

**Plaintiff,**

**vs.**

**AUTO ALLEY, LLC, an Idaho limited  
liability company, CALVIN VISSER and  
VICKI VISSER, as individuals in their capacity  
as Members and/or Managers of Auto Alley,  
LLC,**

**Defendants.**

**CASE NO. CV-2013-0001045**

**MEMORANDUM DECISION  
AND ORDER DENYING  
DEFENDANTS' MOTION FOR  
RECONSIDERATION AND  
FOR STAY OF EXECUTION  
OF JUDGMENT**

THIS MATTER came before the Court on August 5, 2015, for a hearing on Defendants' Motion for Reconsideration and For Stay of Execution of Judgment, filed July 20, 2015; Plaintiff's Motion to Allow Attorney's Fees and Motion to Shorten Time, filed July 29, 2015; and Plaintiff's Order to Show Cause/Temporary Restraining Order re: Writ of Attachment, filed July 31, 2015. Plaintiff Douglas Visser is represented by Brent C. Featherston, of FEATHERSTON LAW FIRM, CHTD. Defendants Auto Alley, LLC, and Calvin and Vicki Visser are represented by D. Toby McLaughlin, of BERG & MCLAUGHLIN, CHTD.

**I. INTRODUCTION**

The plaintiff filed a Second Memorandum of Fees and Costs on July 20, 2015. There being no objection from the defendants, a "Judgment re: Attorney's Fees and Costs" was entered

on August 5, 2015. The defendants seek reconsideration of the Memorandum Decision and Order (hereafter, "Memorandum Decision") entered on July 6, 2015, on the basis that:

[T]he District Court erred in (1) refusing to reconsider and resolve the Defendants' claim that the forfeiture granted in favor of the plaintiff constitutes and inequitable penalty, as the damages to the Plaintiff from the alleged breach of the stipulated Judgment results in a penalty to the Defendants, which bears no reasonable relation to the actual damages suffered by the Plaintiff; and (2) finding that the Plaintiff did not prevent Vicki Visser from paying her share of the Lapham debt; and (3) the Court having overlooked the portion of the Judgment that required the parties to split the debt upon the successful subdivision of the property.

*Memorandum in Support of Defendants' Motion for Reconsideration and for Stay of Execution of Judgment* (filed July 20, 2015), at p. 1.

## II. STANDARD OF REVIEW

Idaho Rule of Civil Procedure 11 provides, in pertinent part:

A motion for reconsideration of any interlocutory orders of the trial court may be made at any time before the entry of final judgment but not later than fourteen (14) days after the entry of the final judgment. A motion for reconsideration of any order of the trial court made after entry of final judgment may be filed within fourteen (14) days from the entry of such order; provided, there shall be no motion for reconsideration of an order of the trial court entered on any motion filed under Rules 50(a), 52(b), 55(c), 59(a), 59(e), 59.1, 60(a), or 60(b).

I.R.C.P. 11(a)(2)(B).

In *Van v. Portneuf Medical Center*, 147 Idaho 552, 212 P.3d 982 (2009), the Idaho Supreme Court stated:

**A decision of whether to grant or deny a motion for reconsideration made pursuant to Idaho Rule of Civil Procedure 11(a)(2)(B) is left to the sound discretion of the trial court.** *Commercial Ventures, Inc. v. Rex M. & Lynn Lea Family Trust*, 145 Idaho 208, 212, 177 P.3d 955, 959 (2008).

*Id.* at 560, 212 P.3d at 990. (Emphasis supplied).



### III. DISCUSSION

With respect to the second and third bases for the defendants' motion for reconsideration, the Court is not persuaded by the defendants' arguments and affirms its finding that the plaintiff did not prevent Vicki Visser from paying her share of the Lapham debt. Also, the portion of the Judgment that addressed splitting the debt was not overlooked. The Judgment provides that: "ONLY upon condition that Defendants, and each of them, fully and completely perform all of the obligation [sic] as set forth hereafter ...," Douglas will convey to Vicki 6.2 acres of the real property designated as Lot 2. *See Judgment*, at p. 2, ¶ A (emphasis in original). It also states: "Douglas shall proceed at his expense ... to secure final plat approval for Lots 1 and 2, ... provided that Douglas' obligation under this subsection is specifically conditioned upon the Defendants' performance of all other terms and conditions of this Judgment." *Id.* at pp. 2-3, ¶ A.

It is undisputed that the defendants failed to fully perform all of their obligations under the Judgment. It is, therefore, disingenuous for them to now argue that Douglas should have performed obligations that were conditioned upon the defendants' performance. Douglas was not required under the Judgment to split the debt upon subdivision of the property or to allow Vicki to use Lot 2 as collateral in a refinance absent the defendants completely fulfilling their obligations under the Judgment. In the latter instance, this cannot be construed as interference by the plaintiff with Vicki's ability to pay off her debt. She need only have completed performance; the fact that she did not is no fault of the plaintiff's.

With respect the first basis for the motion, the Court upon reconsideration affirms its Findings of Fact, which are set forth in the Memorandum Decision as follows:

1. Douglas Visser and Vicki Visser were divorced on February 7, 2005. Douglas was awarded the community real property located in the City of Ponderay, Bonner County, Idaho. *See Decree of Divorce*, Plaintiff's Exhibit 19. The property had previously been used as a wrecking yard.

2. **The real property was encumbered by a promissory Note and Deed of Trust between Douglas and Vicki Visser, and the Joseph G. Lapham 401(k) plan, in the original amount of \$111,500.00 (hereafter, "Lapham debt"). See Notice of Default, Plaintiff's Exhibit 1.**
3. Sometime in 2006, Douglas agreed to rent the back portion of the property to his son, Calvin. Calvin started a new automobile parts and wrecking yard business on the property. **The oral agreement between Douglas and Calvin was that in lieu of rent, Calvin was to make the interest payments on the Lapham debt and pay the real property taxes, insurance, and utilities on the entire parcel.**
4. In late 2006 or early 2007, Vicki moved back to Sandpoint from Spokane, Washington, and joined Calvin in the business. Vicki and Calvin operated the business as Auto Alley, LLC.
5. Vicki was not involved in negotiating the rental agreement with Douglas.
6. Douglas remarried in 2012. Douglas, his wife Margaret, and Calvin lived together in a house on the property. Vicki also lived on the property at another location.
7. **In early 2013, Douglas discovered that the real property taxes were several years in arrears and that the county was threatening to take the property by tax deed due to delinquent taxes. Taxes were due for the years 2009 through 2012, in the total sum of \$52,807.52. See Complaint (filed June 25, 2013), at p. 3, ¶ XL.**
8. **On May 14, 2013, Douglas paid the sum of \$14,591.74 to pay off the delinquent 2009 real property taxes and stop the tax sale. See Plaintiff's Exhibit 10A.**
9. **The Lapham debt was also delinquent. The balance due exceeded \$295,000.00 on the original note of \$111,500.00.**
10. On August 14, 2013, Lapham issued a Notice of Default on the Note and Deed of Trust. See Plaintiff's Exhibit 1.
11. On June 25, 2013, Douglas filed a Complaint, together with an application for prejudgment attachment and a TRO.
12. The Court entered a TRO on July 3, 2013; and the stipulated Judgment, based upon the MSA, on February 19, 2014 (hereafter, 'Judgment').
13. The Judgment provides that "ONLY upon condition that Defendants, and each of them, fully and completely perform all of the obligation [sic] as set forth hereafter ...," Douglas will convey to Vicki 6.2 acres of the real property designated as Lot 2. See Judgment, at page 2, ¶ A (emphasis in original).
14. The obligations, as set forth in the Judgment, include the following:
  - a. That the defendants pay all current and delinquent property taxes by January 27, 2014.
  - b. That the defendants pay the sum of \$3500.00 by the first of each month to the BRENT C. FEATHERSTON TRUST ACCOUNT in exchange for their continued occupation of the real property through March 31, 2014, with the payments to be applied to the Lapham debt.

- c. That the defendants pay the sum of \$50,000.00 to Joseph Lapham on or before March 31, 2014, with the payment to be credited toward Vicki's portion of the Lapham debt.
- d. That the defendants vacate Lot 1 (consisting of 6.5 acres) on or before March 31, 2014, remove all personal property, and restore the property to its August 15, 2013 condition, excepting normal wear and tear.
- e. That the defendants commission and pay for a Phase I Environmental Study by April 15, 2014.
- f. That the defendants pay in full the balance of Vicki's portion of the Lapham debt on or before June 30, 2014, including all interest and fees.
- 15. The Judgment further provides that if the defendants fail to perform any of the above delineated obligations, the plaintiff is entitled to an immediate writ of possession and a judgment of quiet title.
- 16. On April 3, 2014, the plaintiff filed a Motion for Writ of Possession and Judgment of Quiet Title. An evidentiary hearing was held on April 23, 2014.
- 17. The evidence adduced at the hearing established that the defendants had complied with obligations 14(a), (b) and (c), as listed above, but had not complied with obligations 14(d) and (e). The time for compliance with obligation 14(f) had not yet accrued.
- 18. The Court declined to quiet title or enter a writ of possession at that time. In exchange for an additional payment of \$5000.00, the Court extended the defendants' deadline to vacate and restore Lot 1 by thirty (30) days, until April 30, 2014. Also, the defendants were ordered to pay the plaintiff's costs and attorney's fees incurred in filing and prosecuting the motion. The Court "reserve[d] ruling until further hearing as to issues concerning damages to the premises and all other issues that may arise from the Court's Judgment entered February 19, 2014." *See Judgment Re Writ of Possession and Quiet Title* (filed May 5, 2014).
- 19. On March 27, 2015, the plaintiff filed a second Motion for Writ of Possession and Judgment of Quiet Title. The day before, on March 26, 2015, the defendants filed a Motion for Contempt. A second evidentiary hearing was held on May 20, 28 and 29, 2015.
- 20. The evidence adduced at the second evidentiary hearing established that the defendants have failed to comply with obligations 14(d) and (f), listed above, and that Douglas secured a new loan to pay off the Lapham debt, using the entire parcel as collateral. Specifically, the evidence showed that:
  - a. The defendants did not fully vacate and restore Lot 1 by the extended April 30, 2014 deadline. Specifically, the defendants left some items of personal property on Lot 1; failed to repair some damage to the buildings on Lot 1 caused by the move; and even today, are continuing to use a road on Lot 1 to access Lot 2.
  - b. The defendants did not pay Vicki's portion of the Lapham debt in full on or before June 30, 2014. In fact, nothing additional had been paid by June 30, 2014. On July 18, 2014, the defendants paid \$80,000.00 on the Lapham debt—somewhere between \$30,000.00 and \$45,000.00 less than Vicki's remaining balance on the debt.

- c. **On July 1, 2014, the parties executed an Amendment, Modification and/or Correction of Deed of Trust and Promissory Note ("Modification Agreement"). The Modification Agreement increased the principal balance on the Lapham debt to \$308,827.44 as of February 13, 2014, and required final payment by October 12, 2014. See Plaintiff's Exhibit 3.**
  - d. On August 27, 2014, the plaintiff's attorney wrote to the defendants' former attorney, Margaret Williams, and to Joseph Lapham's attorney, Rex Finney, with a proposal to resolve what Douglas viewed as the remaining issues. See Plaintiff's Exhibit 4. The defendants did not respond to Douglas' proposal.
  - e. The Lapham debt came due on October 12, 2014.
  - f. **On December 24, 2014, Douglas executed a new Promissory Note and Deed of Trust in the amount of \$270,000.00 with third-party lenders. He pledged the entire parcel (Lot 1 and Lot 2) as collateral for this new loan. See Promissory Note. Plaintiff's Exhibit 6, and Deed of Trust, Plaintiff's Exhibit 7.**
  - g. **On December 31, 2014, the new loan closed and Douglas paid off the Lapham debt, in the total amount of \$216,287.26. See Settlement Statement, Plaintiff's Exhibit 5.**
21. On June 19, 2015, a Lis Pendens was filed by the defendants regarding Lot 2.
- 22.

*Memorandum Decision and Order*, at pp. 2-7. (Emphasis supplied).

Based upon the aforementioned facts, and considering the defendants' equitable arguments, the Court notes that the parties had an oral agreement whereby, in lieu of rent, the defendants were to make the interest payments on the Lapham debt and pay the real property taxes, insurance, and utilities on the entire parcel. These payments were not made, which resulted in the Lapham debt rising from an initial amount of \$111,500.00 in the original Note and Deed of Trust to a principal balance of \$308,827.44 in the Modification thereto. Also, the plaintiff paid the sum of \$14,591.74 to pay off the delinquent 2009 real property taxes and stop the tax sale. Finally, with foreclosure looming, the plaintiff borrowed \$270,000.00 from third party lenders (at premium rates because of the history of nonpayment) to refinance the loan on the property. The refinance of the loan using the entire parcel (Lots 1 and 2) as collateral is by no means a windfall or inequitable benefit to the plaintiff, as he is now saddled with this large, new loan, and may well be forced to sell the property to satisfy this new indebtedness.

Moreover, the cases on land sale contracts cited by the defendants are not applicable to the instance case because there is no underlying contract here. In this case, the parties had an oral "rental" agreement. When the defendants failed to pay the property taxes and interest as agreed, the plaintiff filed this action. The parties attended mediation. Both the plaintiff and the defendants were represented by counsel at mediation. A stipulated Judgment, based upon the parties' mediated settlement agreement, was entered by this Court. The Judgment bears the signature of the defendants' former attorney, Margaret Williams, approving as to its form and content. The Judgment, based on the mediated settlement agreement, represents the benefits and burdens bargained for by the parties. The defendants are now asking the Court to relieve them from obligations which were bargained for and mutually agreed upon. The Court will not do so.

Finally, the defendants ask this Court to fashion an equitable remedy, such as having the defendants pay to the plaintiff the \$30,000 that he paid to Mr. Lapham on Vicki's behalf. At no time during the evidentiary hearing did the defendants make such an offer. This offer should have been made to the plaintiff before the Court's issuance of the Memorandum Decision.

For these reasons, the Court, in the exercise of its discretion, finds that when the equities are balanced, the forfeiture granted in favor of the plaintiff is not unconscionable and does not constitute and inequitable penalty. Accordingly, the defendants' motion for reconsideration and for stay of execution of the Judgment is denied.

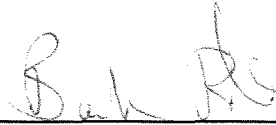
#### **IV. CONCLUSION AND ORDER**

NOW, THEREFORE, based on the foregoing, IT IS HEREBY ORDERED THAT Defendants' Motion for Reconsideration and For Stay of Execution of Judgment is DENIED.

A post-judgment Writ of Attachment shall be issued in a separate Order.

IT IS SO ORDERED.

DATED this 7 day of August, 2015.



**Barbara Buchanan**  
**District Judge**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was ~~mailed, postage prepaid,~~ <sup>faxed</sup> this 7<sup>th</sup> day of August, 2015, to:

Brent C. Featherston  
FEATHERSTON LAW FIRM, CHTD. - us mail prepaid - 8-10-15  
113 South Second Avenue  
Sandpoint, Idaho 83864  
Fax# (208) 263-0400

D. Toby McLaughlin  
BERG & MCLAUGHLIN, CHTD. - us mail prepaid - 8-10-15  
414 Church Street, Suite 203  
Sandpoint, ID 83864  
Fax# (208) 263-7557

  
Deputy Clerk

ORIGINAL

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

**FEATHERSTON LAW FIRM, CHTD.**  
BRENT C. FEATHERSTON, ISB NO. 4602  
Attorney at Law  
113 S. Second Avenue  
Sandpoint, ID 83864  
Phone: (208) 263-6866  
Fax: (208) 263-0400

2015 AUG -7 P 2:19

CLERK DISTRICT COURT

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man )  
as to his sole and separate property, )

CASE NO. CV-2013-1045

Plaintiff, )

**JUDGMENT**

vs. )

AUTO ALLEY, LLC, an Idaho )  
limited liability company, CALVIN )  
VISSER and VICKI VISSER, as )  
individuals and in their capacity as )  
Members and/or Managers of )  
Auto Alley, LLC, )

Defendants. )

**JUDGMENT IS ENTERED** as follows:

Plaintiff, Douglas Visser, is granted Judgment of Quiet Title in and to the real property described as Lots 1 and 2 of Ponderay Place according to the Plat thereof recorded July 11, 2014, in Book 11 of Plats, Page 20 as Instrument No. 861642 records of Bonner County, Idaho and also described as follows:

Lots 1 and 2 of Ponderay Place, according to the Plat recorded July 11, 2014, in Book 11 of Plats at Page 20, as Instrument No. 861642, records of Bonner County, Idaho, and also described as follows:

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

A tract of land located in Section 11, Township 57 North, Range 2 West, Boise Meridian, Bonner County, Idaho, more fully described as follows:

Commencing at the Northeast corner of Section 11;

Thence South 89°20'25" West along the North line of said Section 11, a distance of 856.71 feet (said point being North 89°20'25" East a distance of 466.70 feet from the 1/16 corner);

Thence South 00°11'04" East parallel with the 1/16 line a distance of 128.80 feet to the point of beginning;

Thence South 00°11'04" East, 932.12 feet;

Thence North 89°48'56" East a distance of 571.58 feet;

Thence North 52°09'36" East to an intersection with the East line of said Section 11;

Thence North 00°00'43" West 136.84 feet;

Thence South 89°59'17" West 374.97 feet;

Thence North 00°00'43" West 580.80 feet;

Thence South 89°15'35" West 481.34 feet to the point of beginning.

("Real Property")

The Court enters quiet title as against the Defendants, AUTO ALLEY, LLC, an Idaho limited liability company, CALVIN VISSER and VICKI VISSER, as individuals and in their capacity as members and/or managers of Auto Alley, LLC as to any right, title or claim in and to the above-described Real Property.

Further, the court enters Judgment against the Defendants and in favor of the Plaintiff, Douglas Visser, for attorney's fees and costs pursuant to the Plaintiff's Second Memorandum of Fees and Costs in the amount of \$19,923.28. Said Judgment amount shall accrue interest at

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

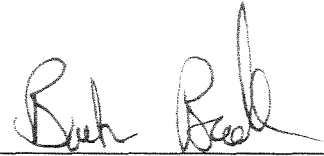
113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington



the judgment rate of 5.375% per annum until fully satisfied, together with all costs and/or fees incurred on collection.

IT IS SO ORDERED and JUDGMENT does hereby enter this 7 day of August, 2015.



HON. BARBARA BUCHANAN  
Bonner County District Judge

### CERTIFICATE OF MAILING

I hereby certify that on the 7<sup>th</sup> day of August, 2015, I caused a true and correct copy of the foregoing document to be served upon the following person in the following manner:

Brent C. Featherston, Esq.  
FEATHERSTON LAW FIRM, CHTD.  
113 S. Second Avenue  
Sandpoint, ID 83864

☒ U.S. Mail, Postage Prepaid - 8-10-15  
☐ Overnight Mail  
☐ Hand delivered  
☒ Facsimile No. (208) 263-0400  
☐ Other: \_\_\_\_\_

D. Toby McLaughlin, Esq.  
BERG & McLAUGHLIN, CHTD.  
414 Church Street, Suite 203  
Sandpoint, ID 83864

☒ U.S. Mail, Postage Prepaid - 8-10-15  
☐ Overnight Mail  
☐ Hand delivered  
☒ Facsimile No. (208) 263-7557  
☐ Other: \_\_\_\_\_

By   
Deputy Clerk.

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2015 AUG -7 P 3:14

CLERK DISTRICT COURT

TOBY McLAUGHLIN, ISB No. 7405  
Berg & McLaughlin, Chtd.  
414 Church Street, Ste 203  
Sandpoint, ID 83864  
Telephone: (208)263-4748  
Facsimile: (208)263-7557  
toby@sandpointlaw.com

*Attorneys for the Defendants*

IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

DOUGLAS VISSER, a married man as to his  
sole and separate property,

Case No. CV-2013-1045

Plaintiff-Respondent,

**MOTION FOR A STAY OF  
EXECUTION ON APPEAL**

vs.

AUTO ALLEY, LLC, an Idaho limited liability  
company, CALVIN VISSER and VICKI  
VISSER, as individuals in their capacity as  
Members and/or Managers of Auto Alley, LLC,

Defendants-Appellants.

COME NOW, the above named defendants/appellants, AUTO ALLEY, LLC, CALVIN  
VISSER and VICKI VISSER, by and through their attorneys of record, BERG &  
McLAUGHLIN, Chtd. and move this Court for an order staying the execution or enforcement of  
any order or judgment entered in this matter during the pendency of appeal.

This motion is made pursuant to I.R.C.P. 62(d) and I.A.R. 13(b)(14) and is based upon  
the following facts:

- 1) That the defendants/appellants have filed a Notice of Appeal with the Idaho Supreme Court.
- 2) That a judgment for quiet title was entered on August 7, 2015 by the Bonner County District Court.

- The defendants/appellants request oral argument and that the Court scheduling a hearing on this matter within fourteen (14) days, or before the expiration of the automatic stay granted under I.A.R. 13(a), or sign the Order as presented if it meets with the Court's approval.

DATED this 7 day of August, 2015.

BERG &amp; McLAUGHLIN, CHTD.

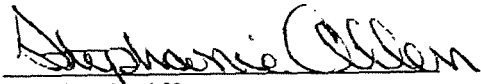
By:

~~TOBY McLAUGHLIN~~  
Attorneys for Appellants

## CERTIFICATE OF SERVICE

On August 7, 2015, I caused copies of the foregoing document to be served by the following methods on the parties listed below as follows, which is the last known address for the listed party:

Margaret Williams, Esq. P.O. Box 283 Ponderay, ID 83852  <i>Attorney for the Defendants</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail  <input type="checkbox"/> By Facsimile Transmission
Brent C. Featherston FEATHERSTON LAW FIRM, CHTD. 113 South Second Ave. Sandpoint, ID 83864  <i>Attorneys for the Respondent</i>	<input type="checkbox"/> By Hand Delivery <input type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input checked="" type="checkbox"/> By Facsimile Transmission

  
Stephanie Allen

1 TOBY McLAUGHLIN, ISB No. 7405  
2 Berg & McLaughlin, Chtd.  
3 414 Church Street, Ste 203  
4 Sandpoint, ID 83864  
5 Telephone: (208)263-4748  
6 Facsimile: (208)263-7557  
7 toby@sandpointlaw.com

8 *Attorneys for the Defendants*

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2015 AUG 10 A 11:01

CLERK DISTRICT COURT

DEPUTY

9 IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT OF THE  
10 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

11 DOUGLAS VISSER, a married man as to his  
12 sole and separate property,

13 Plaintiff-Respondent,

14 vs.

15 AUTO ALLEY, LLC, an Idaho limited liability  
16 company, CALVIN VISSER and VICKI  
17 VISSER, as individuals in their capacity as  
18 Members and/or Managers of Auto Alley, LLC,

19 Defendants-Appellants.

Case No. CV-2013-1045

**ORDER DENYING STAY OF  
EXECUTION DURING PENDENCY OF  
APPEAL**

20 THIS MATTER, having come before the Court by motion of the Defendants-Appellants,  
21 ~~and for good cause appearing,~~ now therefore,

22 IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the Defendant's-  
23 Appellant's Motion for a Stay of Execution during the Pendency of Appeal is hereby denied.

24 DATED this 10 day of August, 2015.

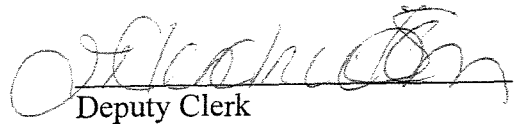
*Barbara Buchanan*

25 Barbara Buchanan  
District Court Judge

# CLERK'S CERTIFICATE OF SERVICE

On August 12, 2015, I caused copies of the foregoing document to be served by the following methods on the parties listed below as follows, which is the last known address for the listed party:

Margaret Williams, Esq. P.O. Box 283 Ponderay, ID 83852  <i>Attorney for the Defendants</i>	<input checked="" type="checkbox"/> By Hand Delivery <input type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input checked="" type="checkbox"/> By <sup>email</sup> Facsimile Transmission
Brent C. Featherston FEATHERSTON LAW FIRM, CHTD. 113 South Second Ave. Sandpoint, ID 83864 208-263-0400 <i>Attorneys for the Plaintiff-Respondent</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input checked="" type="checkbox"/> By Facsimile Transmission
Toby McLaughlin BERG & McLAUGHLIN, CHTD. 414 Church Street, Ste 203 Sandpoint, ID 83864 Fax: (208) 263-7557  <i>Attorneys for the Defendants</i>	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input checked="" type="checkbox"/> By Facsimile Transmission

  
Deputy Clerk

ORIGINAL

**FEATHERSTON LAW FIRM, CHTD.**

BRENT C. FEATHERSTON, ISB# 4602

Attorney at Law

113 S. Second Avenue

Sandpoint, ID 83864

(208) 263-6866

(208) 263-0400 (Fax)

brent@featherstonlaw.com

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man )  
as to his sole and separate property, )

Plaintiff, )

vs. )

AUTO ALLEY, LLC, an Idaho )  
limited liability company, CALVIN )  
VISSER and VICKI VISSER, as )  
individuals and in their capacity as )  
Members and/or Managers of )  
Auto Alley, LLC, )

Defendants. )

CASE NO. CV-2013-1045

**THIRD  
MEMORANDUM OF  
FEES AND COSTS**

Pursuant to Rule 54 and 11 of the Idaho Rules of Civil Procedure and Idaho Code §12-120, §12-121 and §12-123, the Plaintiff Douglas Visser submits and files the following Memorandum of Fees and Costs in the above-captioned matter:

**COSTS AS A MATTER OF RIGHT PURSUANT TO RULE 54(d)(1)(C):**

None	\$ 0.00
TOTAL Costs as a Matter of Right.....	\$ 0.00

**DISCRETIONARY COSTS:**

Copies (36 at .15 each).....	5.40
Color Copies (14 at 1.00 each).....	14.00
Postage.....	.97

THIRD MEMORANDUM OF FEES AND COSTS -1

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

580

TOTAL Discretionary Costs ..... \$ 20.37

**TOTAL DISCRETIONARY COSTS AND COSTS AS A  
MATTER OF RIGHT PURSUANT TO IRCP 54(d)(1)(C).....** \$ 20.37

**ATTORNEY FEES:**

Brent C. Featherston	17.55 hours at \$250.00 per hour	\$ 4,387.50
Paralegal	5.15 hours at \$ 90.00 per hour	\$ 463.50

**SUBTOTAL FEES:** \$ 4,851.00

**TOTAL ATTORNEY'S FEES:** \$ 4,851.00

**RECAPITULATION:**

TOTAL COSTS	\$ 20.37
TOTAL FEES:	\$ 4,851.00

**AMOUNT BILLED TO DATE:** \$ 4,871.37

**LESS FIVE (5) HOURS ESTMATED TIME  
INCLUDED ON SECOND COST BILL** \$ -1,250.00

**TOTAL AMOUNT BILLED:** \$ 3,621.37

The amounts set forth herein and on the attached Featherston Law Firm, Chtd. Slip Listing billing summary included five (5) hours of time estimated to review and respond to counsel's anticipated objections to this Memorandum, and to notice the matter for hearing or appear at hearing on a Motion for Allowance of Fess and Costs. Those estimated five (5) hours or \$1,250.00 were included on Plaintiff's Second Memorandum of Fees and Costs and have been deducted herein for a total fees and costs of \$3,621.37.

The foregoing statement of costs and attorney fees actually incurred by Plaintiff Douglas Visser in this action is correct and in compliance with Rule 54(d) of the Idaho Rules of Civil Procedure. The foregoing statement of attorney fees is supported by the Affidavit of Brent C. Featherston, filed herewith, pursuant to Rule 54(e) of the Idaho Rules of Civil Procedure.

**THIRD MEMORANDUM OF FEES AND COSTS -2**

**ATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington





(C) The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law: Significant, and I have over 22 years practical experience in this type of complex litigation.

(D) The prevailing charges for like work: The charges set forth above are reasonable and consistent with charges of other similarly experienced or qualified attorneys.

(E) Whether the fee is fixed or contingent: The fees charged were hourly fixed fee, not contingent.

(F) The time limitations imposed by the client or the circumstances of the case: Significant due to the volume of documents and issues raised or submitted by Defendants.

(G) The amount involved and the results obtained: While the amount involved is significant, the position of Defendants prohibits resolution of the case requiring trial of the case. The results obtained were very favorable.

(H) The undesirability of the case: There are many attorneys who refuse to take this type of case for the reasons discussed above.

(I) The nature and length of the professional relationship with the client. This is the first case for Douglas Visser.

(J) Awards in similar cases: In cases of which there are ten (10) years of a rental occupation with little to no documents or agreements, it is unusual to achieve full success on a claim, as occurred in this instance.

(K) The reasonable cost of automated legal research (Computer Assisted Legal Research) if the court finds it was reasonably necessary in preparing a party's case: N/A

(L) Any other factor which the court deems appropriate in the particular case: None

**ATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

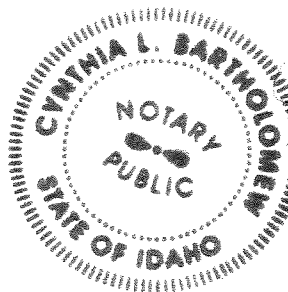
Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman  
113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

DATED this 13<sup>th</sup> day of August, 2015.

Brent C. Featherston  
BRENT C. FEATHERSTON

SUBSCRIBED AND SWORN TO before me this 13<sup>th</sup> day of August, 2015, by Brent C. Featherston.



Cynthia L. Bartholomew  
NOTARY PUBLIC - State of Idaho

Residing at Bozeman, MT

Commission expires 8-15-2020

### CERTIFICATE OF SERVICE

I hereby certify that on the 13<sup>th</sup> day of August, 2015, I caused a true and correct copy of the foregoing document to be served upon the following person in the following manner:

D. Toby McLaughlin, Esq.  
BERG & McLAUGHLIN, CHTD.  
414 Church Street, Suite 203  
Sandpoint, ID 83864

- ☐ U.S. Mail, Postage Prepaid  
☐ Overnight Mail  
☐ Hand delivered  
☒ Facsimile No. (208) 263-7557  
☐ Other: \_\_\_\_\_

By Cynthia L. Bartholomew

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

## Selection Criteria

Slip.Transaction Dat 7/21/2015 - 8/13/2015  
Slip.Classification Open  
Clie.Selection Include: VisserDoug.BCF.CV  
Slip.Transaction Typ 1 - 1

Rate Info - identifies rate source and level

Slip ID	Dates and Time	User Activity	Units	Rate	Slip Value
Posting Status		Client	DNB Time	Rate Info	
Description		Reference		Bill Status	
67397	TIME	B. Featherston	0.60	250.00	150.00
7/23/2015		Research	0.00	T@13	
WIP		VisserDoug.BCF.CV			
Research response to Motiiont o reconsider					
67404	TIME	B. Featherston	1.25	250.00	312.50
7/22/2015		Review	0.00	T@13	
WIP		VisserDoug.BCF.CV			
Review Motion for Reconsideration; Research Forfeiture					
67594	TIME	B. Featherston	1.50	250.00	375.00
7/27/2015		Review	0.00	T@13	
WIP		VisserDoug.BCF.CV			
Review and research Response to Defendants Motion to Reconsider					
67597	TIME	B. Featherston	5.50	250.00	1375.00
7/28/2015		Research	0.00	T@13	
WIP		VisserDoug.BCF.CV			
Research forfeiture and other issues raised by Motion for Reconsideration and Stay of Execution; edit/revise brief					
67598	TIME	B. Featherston	1.50	250.00	375.00
7/28/2015		Revise	0.00	T@13	
WIP		VisserDoug.BCF.CV			
Revise/edit brief					
67599	TIME	B. Featherston	0.75	250.00	187.50
7/29/2015		Revise	0.00	T@13	
WIP		VisserDoug.BCF.CV			
Revise/edit brief; research equitable remedies					
67629	TIME	Cynthia B.	0.50	90.00	45.00
7/23/2015		Draft	0.00	T@13	
WIP		VisserDoug.BCF.CV			
Draft Motion to Shorten Time for Hearing					
67632	TIME	Cynthia B.	0.75	90.00	67.50
7/23/2015		Review	0.00	T@13	
WIP		VisserDoug.BCF.CV			

2015  
10:29 AM

Featherston Law Firm, Chtd.  
Slip Listing

Page 2

Slip ID	Dates and Time	User Activity	Units	Rate	Slip Value
	Posting Status	Client	DNB Time	Rate Info	
	Description	Reference		Bill Status	
	Review Motion for Reconsideration and draft out of Response				
67636	TIME	Cynthia B.	0.50	90.00	45.00
7/29/2015		Revise	0.00	T@13	
WIP		VisserDoug.BCF.CV			
	Revise/edit, format, print final, fax to counsel and file pleadings				
67637	TIME	Cynthia B.	0.50	90.00	45.00
7/29/2015		Filing	0.00	T@13	
WIP		VisserDoug.BCF.CV			
	File maintenance				
67668	TIME	B. Featherston	3.25	250.00	812.50
8/5/2015		Review	0.00	T@13	
WIP		VisserDoug.BCF.CV			
	Review and prepare for hearing; appear at hearings on Motion for Reconsideration				
67669	TIME	B. Featherston	0.50	250.00	125.00
8/4/2015		Review	0.00	T@13	
WIP		VisserDoug.BCF.CV			
	Review file and court repository; draft Judgment and correspondence				
67670	TIME	Cynthia B.	0.50	90.00	45.00
8/3/2015		Other	0.00	T@13	
WIP		VisserDoug.BCF.CV			
	Hand deliver Application and OSC to Toby; prepare Affidavit of Service; hand deliver Judgment for Attorney's Fees and Costs to Judge				
67673	TIME	Cynthia B.	0.25	90.00	22.50
8/6/2015		Other	0.00	T@13	
WIP		VisserDoug.BCF.CV			
	Hand deliver amended Judgment and correspondence to Judge Buchanan.				
67707	TIME	B. Featherston	1.25	250.00	312.50
8/7/2015		Tele. Conf. w/	0.00	T@13	
WIP		VisserDoug.BCF.CV			
	Telephone conference with Sylvia at Judge's chambers; draft Order; edit Order and review Notice of Appeal and Motion for Stay.				
67708	TIME	B. Featherston	0.20	250.00	50.00
8/7/2015		Review	0.00	T@13	
WIP		VisserDoug.BCF.CV			
	Review Motion for Stay of Execution				

2015  
10:29 AM

Featherston Law Firm, Chtd.  
Slip Listing

Page 3

Slip ID	Dates and Time	User Activity	Units	Rate	Slip Value
	Posting Status	Client	DNB Time	Rate Info	
	Description	Reference		Bill Status	
67709	TIME	B. Featherston	0.75	250.00	187.50
	8/10/2015	Review	0.00	T@13	
	WIP	VisserDoug.BCF.CV			
	Review Order Denying Stay; review Memorandum Decision Denying Reconsideration; review Motion for Stay of Execution				
67710	TIME	B. Featherston	0.50	250.00	125.00
	8/12/2015	Review	0.00	T@13	
	WIP	VisserDoug.BCF.CV			
	Review and revise Cost Memorandum				
67711	TIME	Cynthia B.	1.00	90.00	90.00
	8/7/2015	Draft	0.00	T@13	
	WIP	VisserDoug.BCF.CV			
	Draft Third Memorandum of Fees and Costs				
67712	TIME	Cynthia B.	0.75	90.00	67.50
	8/13/2015	Revise	0.00	T@13	
	WIP	VisserDoug.BCF.CV			
	Revise and edit Third Memorandum of Fees and Costs				
67713	TIME	Cynthia B.	0.40	90.00	36.00
	8/13/2015	Review	0.00	T@13	
	WIP	VisserDoug.BCF.CV			
	Review emails; print color photos and save to file				

Grand Total

Billable	22.70	4851.00
Unbillable	0.00	0.00
Total	22.70	4851.00

Less \$1250 estimated time  
already included on Second  
Memorandum of Fees + Costs.

- 1,250.00  
= 3,601.00  
+ 20.37  
\$ 3,621.37

## Selection Criteria

Slip.Transaction Dat 7/21/2015 - 8/13/2015  
Slip.Classification Open  
Clie.Selection Include: VisserDoug.BCF.CV  
Slip.Transaction Typ 2 - 2

Rate Info - identifies rate source and level

Slip ID Dates and Time Posting Status Description	User Activity Client Reference	Units DNB Time	Rate Rate Info Bill Status	Slip Value
67635 7/29/2015 WIP Copies	EXP Cynthia B. \$Expenses VisserDoug.BCF.CV	29	0.15	4.35
67671 8/3/2015 WIP Copies	EXP Cynthia B. \$Expenses VisserDoug.BCF.CV	7	0.15	1.05
67672 8/3/2015 WIP Postage	EXP Cynthia B. \$Expenses VisserDoug.BCF.CV	2	0.485	0.97
67714 8/13/2015 WIP Color Photos	EXP Cynthia B. \$Expenses VisserDoug.BCF.CV	14	1.00	14.00
Grand Total				
	Billable	0.00		20.37
	Unbillable	0.00		0.00
	Total	0.00		20.37

STATE OF IDAHO  
County of Bonner  
FILED Aug. 18, 2015  
AT 12:58 O'Clock P.M.  
CLERK, DISTRICT COURT  
[Signature]  
Deputy

IN THE SUPREME COURT OF THE STATE OF IDAHO

DOUGLAS VISSER, a married man as to his  
sole and separate property,

Plaintiff-Respondent,

vs.

AUTO ALLEY, LLC, an Idaho limited liability  
company, CALVIN VISSER and VICKI  
VISSER, as individuals in their capacity as  
Members and/or Managers of Auto Alley, LLC,

Defendants-Appellants.

Supreme Court Docket No. 43432-2015  
Bonner County Docket No. 2013-1045

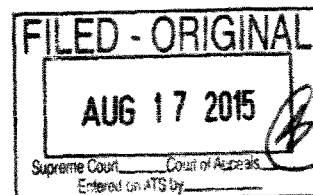
**APPELLANT'S APPLICATION FOR A  
STAY OF PROCEEDINGS DURING  
THE PENDENCY OF APPEAL**

**I. INTRODUCTION**

COME NOW, the Appellants AUTO ALLEY, LLC, an Idaho Limited Liability  
Company, CALVIN VISSER and VICKI VISSER, as individuals in their capacity as Members  
and/or Managers of Auto Alley, LLC, by and through their attorneys of record, BERG &  
McLAUGHLIN, CHTD, and pursuant to Idaho Appellate Rule 13(g), hereby moves this Court  
for a stay of proceedings during the pendency of appeal.

**II. BACKGROUND**

A Judgment was first entered in this matter on February 19, 2014 by the Honorable  
District Court Judge Barbara Buchanan. The Judgment was entered pursuant to the terms of a  
Mediated Settlement Agreement between the parties entered into on or about August 15, 2013.





1 The Judgment provided that, upon completion of various terms, the Respondent would convey  
2 his interest in the real property at issue herein to the Appellants. The Appellants operate a  
3 wrecking yard business upon the real property. The Judgment also provided that if the  
4 Appellants failed to perform the obligations set forth in the Judgment, that the Respondent would  
5 be entitled to an immediate Writ of Possession and a Judgment of Quiet Title in and to all the  
6 property which was to pass to the Appellants.

7 Fewer than two months later, on April 3, 2014, the Respondent filed a Motion for Quiet  
8 Title and a Writ of Possession. The Respondent's Motion was denied, with the Court finding  
9 that the Appellant had substantially complied with the terms set forth in the Judgment. On May  
10 7, 2014, the Appellants filed document titled Motion Re: Plaintiff's Interference with  
11 Defendant's Ability to Comply with the Judgment. That Motion was denied.

12 On March 26, 2015, the Appellant filed a Motion for Contempt, and on March 27, 2015,  
13 the Respondent filed another Motion for Judgment of Quiet Title and Writ of Possession.

14 These Motions came on for hearing on May 20, 28, and 29, 2015. The parties submitted  
15 detailed post-trial briefs. The Appellants argued that they had complied with the terms of the  
16 Judgment except to the extent the Respondent prevented them from doing so. The Respondent  
17 argued that because the Appellants had not fully complied with the Judgment, he was entitled to  
18 a Writ of Possession and Quiet Title over the real property at issue. On July 6, 2015, the District  
19 Court issued a Memorandum Decision and Order in this matter, granting the Respondent's  
20 Motion for Quiet Title and a Writ of Possession. The Order further required the Appellants to  
21 submit a proposed order releasing the Lis Pendens. The Appellants submitted a proposed order  
22 removing the Lis Pendens, which was entered July 16, 2015. The July 6 Order also required the  
23  
24  
25

Respondent to prepare a proposed Order for Writ of Possession. The Writ of Possession, the Court has subsequently instructed, must be submitted in the following form:

2. Plaintiff's Writ of Execution or Attachment shall direct the Sheriff of Bonner County or such other law enforcement office authorized or empowered by law to cause the Defendants' personal property located on the real property described above to be removed to a safe place for storage and/or crushing, sale, disposition under the Plaintiff's direction with all such funds received to be paid to Plaintiff's counsel and/or the Bonner County Clerk of Court until the Plaintiff's Judgment against Defendants is fully satisfied together with all prejudgment interest and costs accruing.

*Order Re: Plaintiff's Application for Prejudgment Attachment and Order to Show Cause.*

p.2.

The Appellants filed a Motion for Reconsideration and applied for a stay under the Idaho Rules of Civil Procedure on July 20, 2015, and that motion was heard on August 7, 2015. The motion for reconsideration and the stay were denied. The Appellants then appealed the matter to this Court on August 6, 2015. A fourteen day stay, pursuant to Idaho Appellate Rule 13(a) was entered in this matter. The Appellants then filed an application for a stay during the pendency of appeal with the District Court, pursuant to I.A.R. 13(b)(14). That application was denied on August 10, 2015.

### III. ARGUMENT

#### a. The Appellants Will Suffer Irreparable Injury, Loss, and Damage If A Stay During The Pendency Of This Appeal Is Not Entered.

I.A.R. 13(g) permits either party to an appeal to apply to the Supreme Court for an order staying a proposed act, a pending action or proceeding, or the enforcement of any judgment.

1 order or decree, provided that the applicant first apply to the District Court. The decision to  
2 grant an appeal is in the discretion of the Court. *Id.*

3 The Writ of Possession, which becomes executable on August 20, 2015, permits the  
4 Plaintiff to seize the premises and any of the Appellants' personal property located on the  
5 premises. The Appellants home and business are located on the premises. Their business is a  
6 wrecking yard. They have operated this business for many years, and this particular parcel of  
7 property is the only zoned wrecking yard in the area. The Writ would take quite literally  
8 everything from the Appellants and permit the Respondents to sell it. Consequently, even if the  
9 Appellants were to prevail on appeal, they will have lost everything they have built over the last  
10 decade. Furthermore, because the Appellants were ordered to submit, and have submitted, a  
11 release of the Lis Pendens recorded against the property at issue, a prospective buyer of the real  
12 property will not be on notice of the present litigation or the Appellants' interest in the real  
13 property, and the buyer may take the property free and clear of the Appellants' interest. The sale  
14 of the property or the personal property will result in irreparable injury to the Appellants.  
15

16 The Appellants intend to raise several issues by this appeal, including, but not limited to,  
17 the District Court's refusal to consider the Appellants' equitable arguments. The District Court  
18 erroneously found that the initial, stipulated judgment which was based upon a mediated  
19 settlement agreement between the parties was not a contract. Therefore, the District Court  
20 refused to consider the Appellants' equitable arguments, based in part upon the holdings of  
21 Graves v. Cupic, 75 Idaho 451, 272 P.2d 1020 (1954) overruled on other grounds by Benz v.  
22 D.L. Evans Bank, 152 Idaho 215, 268 P.3d 1167 (2012) and its progeny. Specifically, the  
23 District Court refused to consider any evidence or argument by the Appellants showing that the  
24 forfeiture provision constituted an unenforceable penalty. Instead, the District Court found that  
25

1 the judgment was unambiguous and determined that it was bound to uphold the forfeiture  
2 provision.

3 Additionally, the District Court based its decision upon facts and claims which occurred  
4 prior to the Mediated Settlement and entry of the subsequent stipulated Judgment, in derogation  
5 of Estate of Holland v. Metro. Prop. & Cas. Ins. Co., 153 Idaho 94, 279 P.3d 80 (2012) and  
6 related cases. The Mediated Settlement, by its terms, extinguished all claims existing prior to the  
7 parties' agreement. Further, much of the evidence considered by the District Court was in  
8 violation of the Statute of Frauds. Therefore, it was error for the Court to consider these facts.

9 **IV. CONCLUSION**

10 For the reasons set forth herein, the Appellants respectfully request that the Court order a  
11 stay of all proceedings in the District Court case, pursuant to I.A.R. 13(g).  
12

13 DATED this <sup>15</sup>17 day of August, 2015.

14  
15 BERG & McLAUGHLIN, CHTD.

16  
17 By: 

18 TOBY McLAUGHLIN  
19 Attorneys for Appellants  
20  
21  
22  
23  
24  
25

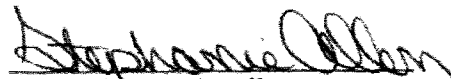
**CERTIFICATE OF SERVICE**

On August 17, 2015, I caused copies of the foregoing document to be served by the following methods on the parties listed below as follows, which is the last known address for the listed party:

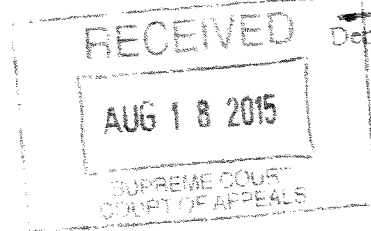
Brent C. Featherston  
FEATHERSTON LAW FIRM, CHTD.  
113 South Second Ave.  
Sandpoint, ID 83864

*Attorneys for the Respondent*

- ☐ By Hand Delivery  
☐ By U.S. Mail  
☐ By Overnight Mail  
☒ By Facsimile Transmission

  
Stephanie Allen

STATE OF IDAHO  
County of Bonner  
FILED Aug. 19 2015  
AT 9:53 P.M.  
CLERK, DISTRICT ONE  
Dmt



IN THE SUPREME COURT OF THE STATE OF IDAHO

DOUGLAS VISSER, a married man as to his  
sole and separate property,

Plaintiff-Respondent,

vs.

AUTO ALLEY, LLC, an Idaho limited liability  
company, CALVIN VISSER and VICKI  
VISSER, as individuals in their capacity as  
Members and/or Managers of Auto Alley, LLC,

Defendants-Appellants.

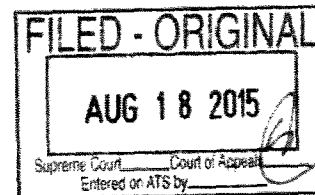
Supreme Court Docket No. 43432-2015  
Bonner County Docket No. 2013-1045

**EX PARTE APPLICATION FOR A  
TEMPORARY STAY OF EXECUTION  
PURSUANT TO I.A.R. 13.1**

**I. INTRODUCTION**

COME NOW, the Appellants AUTO ALLEY, LLC, an Idaho Limited Liability Company, CALVIN VISSER and VICKI VISSER, as individuals in their capacity as Members and/or Managers of Auto Alley, LLC, by and through their attorneys of record, BERG & McLAUGHLIN, CHTD, and pursuant to I.A.R. 13.1, hereby apply to the Idaho Supreme Court for an ex parte temporary stay of execution against the above named respondent from the order granting the Plaintiff a Writ of Possession, entered in the above entitled action on July 6<sup>th</sup>, 2015 by the Honorable Bonner County District Judge Barbara Buchanan.

EX PARTE APPLICATION FOR STAY: J



## II. BACKGROUND

1 A Judgment was first entered in this matter on February 19, 2014 by the Honorable  
2 District Court Judge Barbara Buchanan. The Judgment was entered pursuant to the terms of a  
3 Mediated Settlement Agreement between the parties entered into on or about August 15, 2013.  
4 The Judgment provided that, upon completion of various terms, the Respondent would convey  
5 his interest in the real property at issue herein to the Appellants. The Appellants operate a  
6 wrecking yard business upon the real property. The Judgment also provided that if the  
7 Appellants failed to perform the obligations set forth in the Judgment, that the Respondent would  
8 be entitled to an immediate Writ of Possession and a Judgment of Quiet Title in and to all the  
9 property which was to pass to the Appellants.  
10

11 Fewer than two months later, on April 3, 2014, the Respondent filed a Motion for Quiet  
12 Title and a Writ of Possession. The Respondent's Motion was denied, with the Court finding  
13 that the Appellant had substantially complied with the terms set forth in the Judgment. On May  
14 7, 2014, the Appellants filed document titled Motion Re: Plaintiff's Interference with  
15 Defendant's Ability to Comply with the Judgment. That Motion was denied.  
16

17 On March 26, 2015, the Appellant filed a Motion for Contempt, and on March 27, 2015,  
18 the Respondent filed another Motion for Judgment of Quiet Title and Writ of Possession.

19 These Motions came on for hearing on May 20, 28, and 29, 2015. The parties submitted  
20 detailed post-trial briefs. The Appellants argued that they had complied with the terms of the  
21 Judgment except to the extent the Respondent prevented them from doing so. The Respondent  
22 argued that because the Appellants had not fully complied with the Judgment, he was entitled to  
23 a Writ of Possession and Quiet Title over the real property at issue. On July 6, 2015, the District  
24 Court issued a Memorandum Decision and Order in this matter, granting the Respondent's  
25

1 Motion for Quiet Title and a Writ of Possession. The Order further required the Appellants to  
2 submit a proposed order releasing the Lis Pendens. The Appellants submitted a proposed order  
3 removing the Lis Pendens, which was entered July 16, 2015. The July 6 Order also required the  
4 Respondent to prepare a proposed Order for Writ of Possession. The Writ of Possession, the  
5 Court has subsequently instructed, must be submitted in the following form:

6           2.     Plaintiff's Writ of Execution or Attachment shall direct the Sheriff of Bonner  
7           County or such other law enforcement office authorized or empowered by law to cause the  
8           Defendants' personal property located on the real property described above to be removed to  
9           a safe place for storage and/or crushing, sale, disposition under the Plaintiff's direction with  
10          all such funds received to be paid to Plaintiff's counsel and/or the Bonner County Clerk of  
11          Court until the Plaintiff's Judgment against Defendants is fully satisfied together with all  
12          prejudgment interest and costs accruing.

13  
14           *Order Re: Plaintiff's Application for Prejudgment Attachment and Order to Show Cause,*  
15           p.2.

16           The Appellants filed a Motion for Reconsideration and applied for a stay under the Idaho  
17           Rules of Civil Procedure on July 20, 2015, and that motion was heard on August 7, 2015. The  
18           motion for reconsideration and the stay were denied. The Appellants then appealed the matter to  
19           this Court on August 6, 2015. A fourteen day stay, pursuant to Idaho Appellate Rule 13(a) was  
20           entered in this matter. The Appellants then filed an application for a stay during the pendency of  
21           appeal with the District Court, pursuant to I.A.R. 13(b)(14). That application was denied on  
22           August 10, 2015. The Appellants filed an application for a stay with the Supreme Court under  
23           I.A.R. 13(g) on August 17, 2015. Determination remains pending on that application.  
24  
25



### III. ARGUMENT

#### a. The Appellants Have Complied With the Procedural Requirements Of I.A.R. 13.1.

Notice to the opposing party has been made by facsimile, as evidenced by the Certificate of Service attached hereto.

As evidenced by the records and files herein, the appellants filed an application for a stay pending appeal in the District Court pursuant to the Idaho Rules of Civil Procedure. The District Court denied the appellants' application for a stay pending appeal, but did not overturn the fourteen (14) day automatic stay under I.A.R. 13(a). The appellants filed an application to the Supreme Court for a stay under I.A.R. 13(g) on August 18, 2015. The fourteen (14) day automatic stay will be lifted effective August 21, 2015.

#### b. The Appellants Will Suffer Irreparable Injury, Loss, and Damage If A Stay During The Pendency Of This Appeal Is Not Entered.

The Writ of Possession, which becomes executable on August 20, 2015, permits the Plaintiff to seize the premises and any of the Appellants' personal property located on the premises. The Appellants' home and business are located on the premises. Their business is a wrecking yard. They have operated this business for many years, and this particular parcel of property is the only zoned wrecking yard in the area. The Writ would take quite literally everything from the Appellants and permit the Respondents to sell it. Consequently, even if the Appellants were to prevail on appeal, they will have lost everything they have built over the last decade. Furthermore, because the Appellants were ordered to submit, and have submitted, a release of the Lis Pendens recorded against the property at issue, a prospective buyer of the real property will not be on notice of the present litigation or the Appellants' interest in the real property, and the buyer may take the property free and clear of the Appellants' interest. The sale of the property or the personal property will result in irreparable injury to the Appellants.

1 Since the entry of Writ of Possession, the Respondent has made efforts to prevent the  
2 Appellants from removing their property from the premises. In the course of their business, the  
3 Appellants have collected and are in possession large amounts of steel. If the Appellants are not  
4 granted a stay, the Writ of Possession permits the Respondent to seize and sell any personal  
5 property located on the real property at the time the Writ of Possession is executed. The  
6 Respondent was not involved in this business. He did not purchase any part of the personal  
7 property. Therefore, his only claim to the personal property is for the purpose of satisfying the  
8 District Court's judgment. The Appellants have every right to remove or dispose of their  
9 personal property until the Writ of Execution is executed. However, the Respondent has been  
10 purposefully interfering with this right since the entry of the District Court's Memorandum  
11 Decision on July 6, 2015. The Appellants hired a truck to transport ten thousand pounds of steel  
12 from her property to a recycling plant to be sold. When the Appellants arrived, the manager  
13 explained that the Respondent told him he now owned all of the Appellants' property, and if the  
14 manager accepted delivery of the steel, he would be involving himself in a lawsuit. Because the  
15 Respondent has been discouraging potential buyers from taking the Appellants personal  
16 property, they have been unable to remove all of their personal property from the premises, as  
17 there are few options for relocating an entire junk yard in this area.

19 The Appellants intend to raise several issues by this appeal, including, but not limited to,  
20 the District Court's refusal to consider the Appellants' equitable arguments. The District Court  
21 erroneously found that the initial, stipulated judgment which was based upon a mediated  
22 settlement agreement between the parties was not a contract. Therefore, the District Court  
23 refused to consider the Appellants' equitable arguments, based in part upon the holdings of  
24 Graves v. Cupic, 75 Idaho 451, 272 P.2d 1020 (1954) overruled on other grounds by Benz v.  
25

1 D.L. Evans Bank, 152 Idaho 215, 268 P.3d 1167 (2012) and its progeny. Specifically, the  
2 District Court refused to consider any evidence or argument by the Appellants showing that the  
3 forfeiture provision constituted an unenforceable penalty. Instead, the District Court found that  
4 the judgment was unambiguous and determined that it was bound to uphold the forfeiture  
5 provision.

6 Additionally, the District Court based its decision upon facts and claims which occurred  
7 prior to the Mediated Settlement and entry of the subsequent stipulated Judgment, in derogation  
8 of Estate of Holland v. Metro. Prop. & Cas. Ins. Co., 153 Idaho 94, 279 P.3d 80 (2012) and  
9 related cases. The Mediated Settlement, by its terms, extinguished all claims existing prior to the  
10 parties' agreement. Further, much of the evidence considered by the District Court was in  
11 violation of the Statute of Frauds. Therefore, it was error for the Court to consider these facts.  
12  
13  
14

#### 15 IV. CONCLUSION

16 For the reasons set forth herein, the Appellants respectfully request that the Court order a  
17 stay of all proceedings in the District Court case, pursuant to I.A.R. 13.1.  
18

19 DATED this 18<sup>th</sup> day of August, 2015.

20 BERG & McLAUGHLIN, CHTD.

21 By:   
22

23 TOBY McLAUGHLIN  
24 Attorneys for Appellants  
25


**CERTIFICATE OF SERVICE**

On August 11, 2015, I caused copies of the foregoing document to be served by the following methods on the parties listed below as follows, which is the last known address for the listed party:

Brent C. Featherston  
FEATHERSTON LAW FIRM, CHTD.  
113 South Second Ave.  
Sandpoint, ID 83864

*Attorneys for the Respondent*

- ☐ By Hand Delivery  
☐ By U.S. Mail  
☐ By Overnight Mail  
☒ By Facsimile Transmission

  
Stephanie Allen

STATE OF IDAHO  
County of Bonner  
Aug. 30 2015  
AT 1:21 Clerk P. M.  
CLERK DISTRICT COURT  
Deputy

# In the Supreme Court of the State of Idaho

DOUGLAS VISSER, a married man as to his  
sole and separate property,  
  
Plaintiff-Respondent,  
  
v.  
  
AUTO ALLEY, LLC, an Idaho limited  
liability company, CALVIN VISSER and  
VICKI VISSER, as individuals and in their  
capacity as Members and/or Managers of  
Auto Alley, LLC,  
  
Defendants-Appellants.

## ORDER DENYING APPLICATION FOR A TEMPORARY STAY

Supreme Court Docket No. 43432-2015  
Bonner County No. CV-2013-1045  
  
Ref. No. 15-358

An EX PARTE APPLICATION FOR A TEMPORARY STAY OF EXECUTION PURSUANT TO I.A.R. 13.1 was filed by counsel for Appellants on August 18, 2015, requesting this Court order a stay of all proceedings in the district court case pursuant to I.A.R. 13.1. Therefore, after due consideration,

IT HEREBY IS ORDERED that Appellants' EX PARTE APPLICATION FOR A TEMPORARY STAY OF EXECUTION PURSUANT TO I.A.R. 13.1 be, and hereby is, DENIED.

DATED this 20 day of August, 2015.

By Order of the Supreme Court

Stephen W. Kenyon  
Stephen W. Kenyon, Clerk

cc: Counsel of Record  
District Court Clerk  
District Judge Barbara Buchanan

**FEATHERSTON LAW FIRM, CHTD.**  
**BRENT C. FEATHERSTON, ISB NO. 4602**  
 Attorney at Law  
 113 S. Second Avenue  
 Sandpoint, ID 83864  
 (208) 263-6866  
 (208) 263-0400 (Fax)  
 brent@featherstonlaw.com

STATE OF IDAHO  
 COUNTY OF BONNER  
 DISTRICT JUDICIAL DIST.  
 2015 AUG 26 P 4:18  
 CLERK DISTRICT COURT  
 DEPUTY

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man )  
 as to his sole and separate property, )  
 )  
 Plaintiff, )

CASE NO. CV-2013-01045

vs. )

**WRIT OF EXECUTION**

AUTO ALLEY, LLC, an Idaho )  
 limited liability company, CALVIN )  
 VISSER and VICKI VISSER, as )  
 individuals and in their capacity as )  
 Members and/or Managers of )  
 Auto Alley, LLC, )  
 )  
 Defendants. )

**TO: THE SHERIFF OF BONNER COUNTY, STATE OF IDAHO**

**WHEREAS**, on August 7, 2015, the Plaintiff in the above-entitled action recovered a Judgment against the Defendant for the

TOTAL JUDGMENT.....	\$ 19,923.28
PLUS Accruing Interest at 5.3750% per annum (per diem \$2.93) August 7, 2015, through August 26, 2015.....	55.67
SUBTOTAL.....	\$ 19,978.95
PLUS Execution Costs to Date:	
Issue Writ .....	2.00
Certify and Record Judgment.....	18.50
Bank Garnishment Fees (5 banks @ \$5.00 per bank)	25.00
Sheriff – Service Fees (\$60 per bank).....	\$ 300.00
TOTAL COSTS.....	\$ 345.50
<b>AMOUNT DUE AS OF August 26, 2015.....</b>	<b>\$ 20,324.45</b>

**FEATHERSTON LAW FIRM, CHTD.**  
 ATTORNEYS AT LAW

Daniel P. Featherston  
 Brent C. Featherston\*  
 Jeremy P. Featherston  
 Jeremi L. Ossman

113 S. Second Ave.  
 Sandpoint, ID 83864  
 Phone (208) 263-6866  
 Fax (208) 263-0400

NOW, THEREFORE, YOU, the Sheriff, are hereby required to satisfy said Judgment by collecting the balance due as set forth in this Writ, together with interest at the rate set forth in the Judgment, costs of execution, sheriff's fees and commissions allowed by law, which continue to accrue on said Judgment after the Defendants' personal property, or if sufficient personal property cannot be found, then out of the real property in your county belonging to the Defendant on the day the Judgment was entered or docketed, or at any time thereafter, and make return on this Writ within sixty (60) days after receipt of the Writ, or on a continuing basis if a continuing garnishment is issued, with what you have done endorsed thereon.

DATED this 21<sup>st</sup> day of August, 2015.

MICHAEL ROSEDALE  
Clerk of the District Court

By: [Signature]  
Deputy Clerk



**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

ORIGINAL

COPY

**FEATHERSTON LAW FIRM, CHTD.**  
**BRENT C. FEATHERSTON, ISB NO. 4602**  
Attorney at Law  
113 S. Second Avenue  
Sandpoint, ID 83864  
(208) 263-6866  
(208) 263-0400 (Fax)  
brent@featherstonlaw.com

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man )	CASE NO. CV-2013-01045
as to his sole and separate property, )	
)	
Plaintiff, )	
)	
vs. )	<b>WRIT OF EXECUTION</b>
)	
AUTO ALLEY, LLC, an Idaho )	
limited liability company, CALVIN )	
VISSER and VICKI VISSER, as )	
individuals and in their capacity as )	
Members and/or Managers of )	
Auto Alley, LLC, )	
)	
Defendants. )	

**TO: THE SHERIFF OF BONNER COUNTY, STATE OF IDAHO**

**WHEREAS**, on August 7, 2015, the Plaintiff in the above-entitled action recovered a Judgment against the Defendant for the

TOTAL JUDGMENT.....	\$ 19,923.28
PLUS Accruing Interest at 5.3750% per annum	
(per diem \$2.93) August 7, 2015, through	
August 26, 2015.....	55.67
SUBTOTAL.....	<u>\$ 19,978.95</u>
PLUS Execution Costs to Date:	
Issue Writ .....	2.00
Certify and Record Judgment.....	18.50
Bank Garnishment Fees (5 banks @ \$5.00 per bank)	25.00
Sheriff - Service Fees (\$35 per bank).....	<u>\$ 175.00</u>
TOTAL COSTS.....	<u>\$ 220.50</u>
 AMOUNT DUE AS OF August 26, 2015.....	 <u>\$ 20,143.78</u>

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

WRIT OF EXECUTION - 1

605



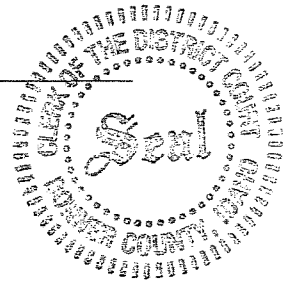
NOW, THEREFORE, YOU, the Sheriff, are hereby required to satisfy said Judgment by collecting the balance due as set forth in this Writ, together with interest at the rate set forth in the Judgment, costs of execution, sheriff's fees and commissions allowed by law, which continue to accrue on said Judgment after the Defendants' personal property, or if sufficient personal property cannot be found, then out of the real property in your county belonging to the Defendant on the day the Judgment was entered or docketed, or at any time thereafter, and make return on this Writ within sixty (60) days after receipt of the Writ, or on a continuing basis if a continuing garnishment is issued, with what you have done endorsed thereon.

DATED this 26<sup>th</sup> day of August, 2015.

MICHAEL ROSEDALE  
Clerk of the District Court

By: Andy R.

Deputy Clerk



**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

ORIGINAL

**FEATHERSTON LAW FIRM, CHTD.**  
BRENT C. FEATHERSTON, ISB NO. 4602  
Attorney at Law  
113 S. Second Avenue  
Sandpoint, ID 83864  
(208) 263-6866  
(208) 263-0400 (Fax)  
brent@featherstonlaw.com

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2015 AUG 26 P 4:11

CLERK DISTRICT COURT

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man )  
as to his sole and separate property, )

CASE NO. CV-2013-01045

Plaintiff, )

**WRIT OF EXECUTION**

vs. )

AUTO ALLEY, LLC, an Idaho )  
limited liability company, CALVIN )  
VISSER and VICKI VISSER, as )  
individuals and in their capacity as )  
Members and/or Managers of )  
Auto Alley, LLC, )

Defendants. )

**TO: THE SHERIFF OF BONNER COUNTY,**

**WHEREAS**, on August 7, 2015, the Plaintiff in the above-entitled action recovered a Judgment against the Defendant for the

TOTAL JUDGMENT..... \$ 19,923.28

PLUS Accruing Interest at 5.3750% per annum

(per diem \$2.93) August 7, 2015, through

August 26, 2015..... 55.67

SUBTOTAL..... \$ 19,978.95

PLUS Execution Costs to Date:

Issue Writ ..... 2.00

Certify and Record Judgment..... 18.50

Bank Garnishment Fees (5 banks @ \$5.00 per bank) 25.00

Sheriff - Service Fees (\$35 per bank)..... \$ 175.00

TOTAL COSTS..... \$ 220.50

**AMOUNT DUE AS OF August 26, 2015..... \$ 20,143.78**

WRIT OF EXECUTION - 1

incorrect  
amount  
correction  
on this doc  
by Brent Featherston

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

20,324.45

807

NOW, THEREFORE, YOU, the Sheriff, are hereby required to satisfy said Judgment by collecting the balance due as set forth in this Writ, together with interest at the rate set forth in the Judgment, costs of execution, sheriff's fees and commissions allowed by law, which continue to accrue on said Judgment after the Defendants' personal property, or if sufficient personal property cannot be found, then out of the real property in your county belonging to the Defendant on the day the Judgment was entered or docketed, or at any time thereafter, and make return on this Writ within sixty (60) days after receipt of the Writ, or on a continuing basis if a continuing garnishment is issued, with what you have done endorsed thereon.

DATED this 26<sup>th</sup> day of August, 2015.

MICHAEL ROSEDALE  
Clerk of the District Court

By: Andy R.  
Deputy Clerk



FEATHERSTON LAW FIRM, CHTD.  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

WRIT OF EXECUTION - 2

668

2015 AUG 28 AM 11 41

**MEMORANDUM TO COURT FILE**

CLERK DISTRICT COURT

TO: Court File – Visser v. Auto Alley, LLC - CV-2013-01045  
FROM: Featherston Law Firm, Chtd. – Cynthia Bartholomew, Paralegal  
RE: Writ of Execution – Explanation of Revised Writs  
DATE: August 28, 2015

The original Writ of Execution in this matter was revised three (3) times without being sent out for execution due to the Civil Clerk (Sally) at the Sheriff's Office being out of the office and Featherston Law Firm receiving conflicting information regarding the Sheriff's fees for executing the Writ.

The Writ was not sent out for execution the previous two (2) times, therefore, only one (1) fee of \$2.00 for issuing the Writ is being charged by the Clerk.

This third and final revision of the Writ bears the correct amounts and will be served today, August 28<sup>th</sup>, by LeAnne Fleck, Civil Clerk, Bonner County Sheriff's Office.

ORIGINAL

**FEATHERSTON LAW FIRM, CHTD.**  
BRENT C. FEATHERSTON, ISB NO. 4602  
Attorney at Law  
113 S. Second Avenue  
Sandpoint, ID 83864  
(208) 263-6866  
(208) 263-0400 (Fax)  
brent@featherstonlaw.com

Attorney for Plaintiff

STATE OF IDAHO  
COUNTY OF BONNER  
CLERK OF DISTRICT COURT  
AUG 28 AM 11:40  
CLEARANCE COURT

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man )  
as to his sole and separate property, )

Plaintiff, )

vs. )

AUTO ALLEY, LLC, an Idaho )  
limited liability company, CALVIN )  
VISSER and VICKI VISSER, as )  
individuals and in their capacity as )  
Members and/or Managers of )  
Auto Alley, LLC, )

Defendants. )

CASE NO. CV-2013-01045

**WRIT OF EXECUTION**

**TO: THE SHERIFF OF BONNER COUNTY, STATE OF IDAHO**

**WHEREAS**, on August 7, 2015, the Plaintiff in the above-entitled action recovered a Judgment against the Defendant for the

TOTAL JUDGMENT..... \$ 19,923.28

PLUS Accruing Interest at 5.3750% per annum  
(per diem \$2.93) August 7, 2015, through  
August 26, 2015.....

55.67

SUBTOTAL..... \$ 19,978.95

PLUS Execution Costs to Date:

Issue Writ ..... 2.00

Certify and Record Judgment..... 18.50

Bank Garnishment Fees (5 banks @ \$5.00 per bank) 25.00

~~Sheriff Service Fees (\$60 per bank) 35.00~~ \$ 300.00

TOTAL COSTS..... \$ 345.50

**AMOUNT DUE AS OF August 26, 2015..... \$ 20,324.45**

NOW, THEREFORE, YOU, the Sheriff, are hereby required to satisfy said Judgment by collecting the balance due as set forth in this Writ, together with interest at the rate set forth in the Judgment, costs of execution, sheriff's fees and commissions allowed by law, which continue to accrue on said Judgment after the Defendants' personal property, or if sufficient personal property cannot be found, then out of the real property in your county belonging to the Defendant on the day the Judgment was entered or docketed, or at any time thereafter, and make return on this Writ within sixty (60) days after receipt of the Writ, or on a continuing basis if a continuing garnishment is issued, with what you have done endorsed thereon.

DATED this 26<sup>th</sup> day of August, 2015.

MICHAEL ROSEDALE  
Clerk of the District Court

By:   
Deputy Clerk



**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

**FEATHERSTON LAW FIRM, CHTD.**  
BRENT C. FEATHERSTON, ISB NO. 4602  
Attorney at Law  
113 S. Second Avenue  
Sandpoint, ID 83864  
(208) 263-6866  
(208) 263-0400 (Fax)  
brent@featherstonlaw.com

Attorney for Plaintiff

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2015 AUG 28 A 11:48

CLERK DISTRICT COURT

DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man )  
as to his sole and separate property, )  
Plaintiff, )

CASE NO. CV-2013-01045

**WRIT OF EXECUTION**

vs. )

AUTO ALLEY, LLC, an Idaho )  
limited liability company, CALVIN )  
VISSER and VICKI VISSER, as )  
individuals and in their capacity as )  
Members and/or Managers of )  
Auto Alley, LLC, )  
Defendants. )

**TO: THE SHERIFF OF BONNER COUNTY, STATE OF IDAHO**

**WHEREAS**, on August 7, 2015, the Plaintiff in the above-entitled action recovered a Judgment against the Defendant for the

TOTAL JUDGMENT.....	\$ 19,923.28
PLUS Accruing Interest at 5.3750% per annum (per diem \$2.93) August 7, 2015, through August 28, 2015.....	61.53
SUBTOTAL.....	<u>\$ 19,984.81</u>
PLUS Execution Costs to Date:	
Issue Writ .....	2.00
Certify and Record Judgment.....	18.50
Bank Garnishment Fees (5 banks @ \$5.00 per bank)	<u>\$ 25.00</u>
TOTAL COSTS.....	<u>\$ 45.50</u>

**AMOUNT DUE AS OF August 28, 2015..... \$ 20,030.31**

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

NOW, THEREFORE, YOU, the Sheriff, are hereby required to satisfy said Judgment by collecting the balance due as set forth in this Writ, together with interest at the rate set forth in the Judgment, costs of execution, sheriff's fees and commissions allowed by law, which continue to accrue on said Judgment after the Defendants' personal property, or if sufficient personal property cannot be found, then out of the real property in your county belonging to the Defendant on the day the Judgment was entered or docketed, or at any time thereafter, and make return on this Writ within sixty (60) days after receipt of the Writ, or on a continuing basis if a continuing garnishment is issued, with what you have done endorsed thereon.

DATED this 26<sup>th</sup> day of August, 2015.

MICHAEL ROSEDALE  
Clerk of the District Court

By: [Signature]  
Deputy Clerk



FEATHERSTON LAW FIRM, CHTD.  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

WRIT OF EXECUTION - 2

613



# In the Supreme Court of the State of Idaho

STATE OF IDAHO

County of Bonner

Sept. 11, 2015  
2:29 PM  
DISTRICT COURT  
Dmt

DOUGLAS VISSER, a married man as to his  
sole and separate property,

Plaintiff-Respondent,

v.

AUTO ALLEY, LLC, an Idaho limited  
liability company, CALVIN VISSER and  
VICKI VISSER, as individuals and in their  
capacity as Members and/or Managers of  
Auto Alley, LLC,

Defendants-Appellants.

ORDER DENYING APPLICATION  
FOR A STAY OF PROCEEDINGS  
DURING THE PENDENCY OF  
APPEAL

Supreme Court Docket No. 43432-2015  
Bonner County No. CV-2013-1045

Ref. No. 15-384

APPELLANT'S APPLICATION FOR A STAY OF PROCEEDINGS DURING THE  
PENDENCY OF APPEAL was filed by counsel for Appellants on August 17, 2015, requesting this  
Court stay all proceedings in the district court pursuant to I.A.R. 13(g). Therefore, after due  
consideration,

IT HEREBY IS ORDERED that APPELLANT'S APPLICATION FOR STAY OF  
PROCEEDINGS DURING THE PENDENCY OF APPEAL be, and hereby is, DENIED.

DATED this 9<sup>th</sup> day of September, 2015.

By Order of the Supreme Court

Stephen W. Kenyon  
Stephen W. Kenyon, Clerk

cc: Counsel of Record

ORDER DENYING APPLICATION FOR STAY OF PROCEEDINGS DURING THE  
PENDENCY OF APPEAL – Docket No. 43432-2015

ORIGINAL

**FEATHERSTON LAW FIRM, CHTD.**  
BRENT C. FEATHERSTON, ISB NO. 4602  
Attorney at Law  
113 S. Second Avenue  
Sandpoint, ID 83864  
Phone: (208) 263-6866  
Fax: (208) 263-0400

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man )  
as to his sole and separate property, )

Plaintiff, )

vs. )

AUTO ALLEY, LLC, an Idaho )  
limited liability company, CALVIN )  
VISSER and VICKI VISSER, as )  
individuals and in their capacity as )  
Members and/or Managers of )  
Auto Alley, LLC, )

Defendants. )

CASE NO. CV-2013-1045

**ORDER RE: ATTORNEY'S FEES  
AND COSTS**

Plaintiff filed his Third Memorandum of Fees and Costs on August 14, 2015. The Defendants, having filed no objection within fourteen (14) days have waived their objection.

Based upon Idaho Rules of Civil Procedure, the Plaintiff is awarded fees and costs in the amount of \$3,621.37 on Plaintiff's Third Memorandum of Fees and Costs.

IT IS SO ORDERED this 16 day of September, 2015.

  
HON. BARBARA BUCHANAN

**ORDER RE: PLAINTIFF'S APPLICATION FOR PREJUDGMENT  
ATTACHMENT AND ORDER TO SHOW CAUSE - 1**

615

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

## CERTIFICATE OF MAILING

I hereby certify that on the 17 day of September, 2015, I caused a true and correct copy of the foregoing document to be served upon the following person in the following manner:

Brent C. Featherston, Esq.  
FEATHERSTON LAW FIRM, CHTD.  
113 S. Second Avenue  
Sandpoint, ID 83864

☒ U.S. Mail, Postage Prepaid  
☐ Overnight Mail  
☐ Hand delivered  
☐ Facsimile No. (208) 263-0400  
☐ Other: \_\_\_\_\_

D. Toby McLaughlin, Esq.  
BERG & McLAUGHLIN, CHTD.  
414 Church Street, Suite 203  
Sandpoint, ID 83864

☐ U.S. Mail, Postage Prepaid  
☐ Overnight Mail  
☐ Hand delivered  
☒ Facsimile No. (208) 263-7557  
☐ Other: \_\_\_\_\_

By Reppert

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

ORDER RE: PLAINTIFF'S APPLICATION FOR PREJUDGMENT  
ATTACHMENT AND ORDER TO SHOW CAUSE - 2

ORIGINAL

SEP 16 AM 9 22

CLERK DISTRICT COURT

**FEATHERSTON LAW FIRM, CHTD.**  
BRENT C. FEATHERSTON, ISB NO. 4602  
Attorney at Law  
113 S. Second Avenue  
Sandpoint, ID 83864  
Phone: (208) 263-6866  
Fax: (208) 263-0400

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man )  
as to his sole and separate property, )

Plaintiff, )

vs. )

AUTO ALLEY, LLC, an Idaho )  
limited liability company, CALVIN )  
VISSER and VICKI VISSER, as )  
individuals and in their capacity as )  
Members and/or Managers of )  
Auto Alley, LLC, )

Defendants. )

CASE NO. CV-2013-1045

**SECOND JUDGMENT RE:  
ATTORNEY'S FEES AND COSTS**

**JUDGMENT IS ENTERED** as follows:

~~Based upon the Plaintiff's Third Memorandum of Fees and Costs filed August 14,~~  
~~2015, and there being objections filed by the Defendants,~~ The Plaintiff, Douglas Visser, is  
awarded Judgment against the Defendants, Auto Alley, LLC, an Idaho limited liability  
company, CALVIN VISSER and VICKI VISSER, individually, and in their capacity as  
members and/or managers of Auto Alley, LLC, in the amount \$3,621.37, ~~representing the~~

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

~~fees and costs set forth in the Third Memorandum of Fees and Costs together with estimated fees and costs stated by sworn Affidavit of Counsel.~~ *DS*

The Plaintiff's Judgment against the Defendants shall accrue interest at the Judgment rate of 5.375% together with all costs or fees incurred on collection until fully satisfied.

IT IS SO ORDERED and JUDGMENT does hereby enter this 16 day of September, 2015.

*Barbara Buchanan*  
HON. BARBARA BUCHANAN

#### CERTIFICATE OF MAILING

I hereby certify that on the 17 day of September, 2015, I caused a true and correct copy of the foregoing document to be served upon the following person in the following manner:

Brent C. Featherston, Esq.  
FEATHERSTON LAW FIRM, CHTD.  
113 S. Second Avenue  
Sandpoint, ID 83864

☒ U.S. Mail, Postage Prepaid  
☐ Overnight Mail  
☐ Hand delivered  
☐ Facsimile No. (208) 263-0400  
☐ Other: \_\_\_\_\_

D. Toby McLaughlin, Esq.  
BERG & McLAUGHLIN, CHTD.  
414 Church Street, Suite 203  
Sandpoint, ID 83864

☐ U.S. Mail, Postage Prepaid  
☐ Overnight Mail  
☐ Hand delivered  
☒ Facsimile No. (208) 263-7557  
☐ Other: \_\_\_\_\_

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

By *L. Campbell*

618

State of IDAHO  
Bonner County Sheriff's Office  
Civil Division  
4001 N. Boyer Ave.  
Sandpoint, ID 83864

SEP 30-8 2 4 15

CLEARING OFFICE

KB

Dated the 30th day of September, 2015

Fees:

Service:	125.00
Mileage:	0.00
Other :	75.00
Total :	200.00

Daryl D Wheeler, Sheriff  
Bonner County Sheriff's Office, IDAHO

BY: *[Signature]*  
Authorized Representative  
Civil Division

Comments

Received \$164.87 from Wells Fargo Bank/Writ Returned to Court

State of IDAHO  
Bonner County Sheriff's Office  
Civil Division  
4001 N. Boyer Ave.  
Sandpoint, ID 83864

Defendant	Disposition:
Calvin J Visser 31564 Highway 200	Ponderay, ID 83852
Vicki Lynn Visser 31564 Highway 200	Ponderay, ID 83852
Auto Alley 31594 Highway 200	Ponderay, ID 83852
Garnishee	Disposition: SRU Served, returned unsatisfied
Wells Fargo Bank 320 N 4th Ave	Sandpoint, ID 83864
Served on: 28th day of August, 2015	by Fleck, L
Served to: Mandeep Singh	( )
320 N 4th Ave	Sandpoint, ID 83864
Mountain West Bank 476655 Highway 95	Ponderay, ID 83852
Served on: 28th day of August, 2015	by Fleck, L
Served to: Mountain West Bank	( )
476655 Highway 95	Ponderay, ID 83852
Union Potlatch No 1 Federal Credit 476864 Highway 95; STE 4	Ponderay, ID 83852
Served on: 28th day of August, 2015	by Fleck, L
Served to: Potlatch #1 Federal Credit	( )
476864 Highway 95; STE 4	Ponderay, ID 83852
US Bank 201 Main St	Sandpoint, ID 83864
Served on: 28th day of August, 2015	by Fleck, L
Served to: US Bank	( )
201 Main St	Sandpoint, ID 83864
Banking Center Columbia Bank 414 Church St	Sandpoint, ID 83864
Served on: 28th day of August, 2015	by Fleck, L
Served to: Columbia Bank	( )
414 Church St	Sandpoint, ID 83864
Plaintiff	Disposition:
Douglas Lynn Visser 31564 Highway 200	Ponderay, ID 83852

Process Number: C15-01331

Court Number: CV13-1045

I, Daryl D Wheeler, Sheriff of Bonner County Sheriff's Office do hereby certify that I received the foregoing Writ of Execution on the 28th day of August, 2015.

ORIGINAL

**FEATHERSTON LAW FIRM, CHTD.**  
BRENT C. FEATHERSTON, ISB NO. 4602  
Attorney at Law  
113 S. Second Avenue  
Sandpoint, ID 83864  
(208) 263-6866  
(208) 263-0400 (Fax)  
brent@featherstonlaw.com

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

DOUGLAS VISSER, a married man )  
as to his sole and separate property, )

Plaintiff, )

vs. )

AUTO ALLEY, LLC, an Idaho )  
limited liability company, CALVIN )  
VISSER and VICKI VISSER, as )  
individuals and in their capacity as )  
Members and/or Managers of )  
Auto Alley, LLC, )

Defendants. )

CASE NO. CV-2013-01045

**WRIT OF EXECUTION**

**TO: THE SHERIFF OF BONNER COUNTY, STATE OF IDAHO**

**WHEREAS**, on August 7, 2015, the Plaintiff in the above-entitled action recovered a Judgment against the Defendant for the

TOTAL JUDGMENT.....	\$ 19,923.28
PLUS Accruing Interest at 5.3750% per annum (per diem \$2.93) August 7, 2015, through August 28, 2015.....	61.53
SUBTOTAL.....	<u>\$ 19,984.81</u>
PLUS Execution Costs to Date:	
Issue Writ .....	2.00
Certify and Record Judgment.....	18.50
Bank Garnishment Fees (5 banks @ \$5.00 per bank)	<u>\$ 25.00</u>
TOTAL COSTS.....	<u>\$ 45.50</u>
<b>AMOUNT DUE AS OF August 28, 2015.....</b>	<b><u>\$ 20,030.31</u></b>

**FEATHERSTON LAW FIRM, CHTD.**  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington

WRIT OF EXECUTION - 1

621

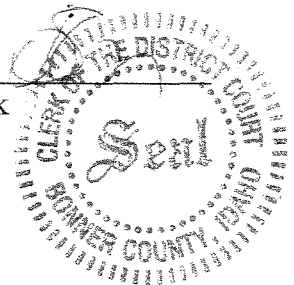


NOW, THEREFORE, YOU, the Sheriff, are hereby required to satisfy said Judgment by collecting the balance due as set forth in this Writ, together with interest at the rate set forth in the Judgment, costs of execution, sheriff's fees and commissions allowed by law, which continue to accrue on said Judgment after the Defendants' personal property, or if sufficient personal property cannot be found, then out of the real property in your county belonging to the Defendant on the day the Judgment was entered or docketed, or at any time thereafter, and make return on this Writ within sixty (60) days after receipt of the Writ, or on a continuing basis if a continuing garnishment is issued, with what you have done endorsed thereon.

DATED this 29<sup>th</sup> day of August, 2015.

MICHAEL ROSEDALE  
Clerk of the District Court

By: [Signature]  
Deputy Clerk

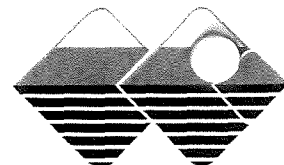


FEATHERSTON LAW FIRM, CHITD.  
ATTORNEYS AT LAW

Daniel P. Featherston  
Brent C. Featherston\*  
Jeremy P. Featherston  
Jeremi L. Ossman

113 S. Second Ave.  
Sandpoint, ID 83864  
Phone (208) 263-6866  
Fax (208) 263-0400

\*Licensed in Idaho & Washington



**Mountain  
West Bank**

Division of Glacier Bank

P.O. Box 1059

Coeur d'Alene, ID 83816-1059

800.641.5401

August 31, 2015

Bonner County Sheriff Office  
4001 N Boyer  
Sandpoint, ID 83864

Attn: Garnishment Department

RE: Auto Alley % Mr Calvin Visser & Ms Vicki Visser

This letter is in regards to the Writ of Execution in the amount of \$20,323.01 served on us on August 28, 2015.

No account was found under this name or Tax ID number.

If you have any questions, please contact the undersigned at (208) 415-5312.

Sincerely,

Hailey Kaup  
Operations Assistant

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER  
Notice and Interrogatory Sheriff's Office, Bonner County, Idaho

8/28/15  
1:55 PM  
JKB

Case #: CV13-1045

Sheriff's Case #: C15-1331

Any and all account(s) of Defendant(s)  
Auto Alley  
% Mr. Calvin Visser & Ms. Vicki Visser  
31592 Hwy 200  
Ponderay, Idaho 83852

TO: Mountain West Bank

**NOTICE:** YOU ARE HEREBY NOTIFIED, that all monies, goods, credits, effects, debts due or owing, shares of stock in any corporation or association, and all other personal property in your possession or under control of you, belonging to the Defendant (or to either of them), are ATTACHED OR LEVIED UPON pursuant to the attached Writ, and you are hereby notified not to pay over or transfer the same to anyone by myself, and you are hereby required to answer the following interrogatories.

**You are required to make full and true answers, to the same under oath and filed in the cause within five (5) day thereafter. Should you fail to do so, the plaintiff may take judgment against you by default, or the court may, upon motion compel you to answer attachment.**

Dated this 28th day of August, 2015.

Daryl Wheeler, Bonner County Sheriff

By C. LeAnne Fleck Civil Clerk

**STATUTORY INTERROGATORIES:**

Q: At the time of service of the Notice and Interrogatory upon you, had you in your possession or under your control any property, money or effects of the within named defendants (or any of them?) If so, state what property, what money or effects, how much and what value.

Answer:

no accounts

**AMOUNT DUE:** (Includes costs/fees and Interest to attachment date) **\$ 20,323.01**

(Per Idaho code § 31-3203 & § 28-22-104)

Signature: Darby Hump Date: Aug 31 2015

Address: PO Box 1059 Coeur d'Alene ID 83816

Title: Operations Clerk Phone Number: 208-445-5312

**PLEASE REMIT WITHIN FIVE (5) DAYS**

Make checks payable to:  
Bonner County Sheriff's Office  
Attention: Civil Division  
4001 N Boyer Rd  
Sandpoint, ID 83864

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER  
Notice and Interrogatory Sheriff's Office, Bonner County, Idaho

Case #: CV13-1045

Sheriff's Case #: C15-1331

Any and all account(s) of Defendant(s)  
Auto Alley  
% Mr. Calvin Visser & Ms. Vicki Visser  
31592 Hwy 200  
Ponderay, Idaho 83852

TO: Columbia Bank

**NOTICE:** YOU ARE HEREBY NOTIFIED, that all monies, goods, credits, effects, debts due or owing, shares of stock in any corporation or association, and all other personal property in your possession or under control of you, belonging to the Defendant (or to either of them), are ATTACHED OR LEVIED UPON pursuant to the attached Writ, and you are hereby notified not to pay over or transfer the same to anyone by myself, and you are hereby required to answer the following interrogatories.

**You are required to make full and true answers, to the same under oath and filed in the cause within five (5) day thereafter. Should you fail to do so, the plaintiff may take judgment against you by default, or the court may, upon motion compel you to answer attachment.**

Dated this 28th day of August, 2015.

Daryl Wheeler, Bonner County Sheriff

By C. LeAnne Fleck Civil Clerk

**STATUTORY INTERROGATORIES:**

Q: At the time of service of the Notice and Interrogatory upon you, had you in your possession or under your control any property, money or effects of the within named defendants (or any of them?) If so, state what property, what money or effects, how much and what value.

Answer:

NO accts found.

**AMOUNT DUE:** (Includes costs/fees and Interest to attachment date) **\$ 20,323.01**  
(Per Idaho code § 31-3203 & § 28-22-104)

Signature: Jeri Christini Date: 9.2.15

Address: \_\_\_\_\_

Title: \_\_\_\_\_ Phone Number: \_\_\_\_\_

**PLEASE REMIT WITHIN FIVE (5) DAYS**

Make checks payable to:  
Bonner County Sheriff's Office  
Attention: Civil Division  
4001 N Boyer Rd  
Sandpoint, ID 83864

Columbia State Bank  
6210 74th St W Ste B MS OP0241  
Lakewood WA 98499  
(253) 471-5013 / (253) 471-5025 Fax

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER  
Notice and Interrogatory Sheriff's Office, Bonner County, Idaho

Case #: CV13-1045

Sheriff's Case #: C15-1331

Any and all account(s) of Defendant(s)

Auto Alley

% Mr. Calvin Visser & Ms. Vicki Visser

31592 Hwy 200

Ponderay, Idaho 83852

201 Main St  
Sandpoint ID 83860  
8/28/15 209263  
2/19/16

TO: US Bank

**NOTICE:** YOU ARE HEREBY NOTIFIED, that all monies, goods, credits, effects, debts due or owing, shares of stock in any corporation or association, and all other personal property in your possession or under control of you, belonging to the Defendant (or to either of them), are ATTACHED OR LEVIED UPON pursuant to the attached Writ, and you are hereby notified not to pay over or transfer the same to anyone by myself, and you are hereby required to answer the following interrogatories.

**You are required to make full and true answers, to the same under oath and filed in the cause within five (5) day thereafter. Should you fail to do so, the plaintiff may take judgment against you by default, or the court may, upon motion compel you to answer attachment.**

Dated this 28th day of August, 2015.

Daryl Wheeler, Bonner County Sheriff

By C. LeAnne Healy Civil Clerk

**STATUTORY INTERROGATORIES:**

Q: At the time of service of the Notice and Interrogatory upon you, had you in your possession or under your control any property, money or effects of the within named defendants (or any of them?) If so, state what property, what money or effects, how much and what value.

Answer:

No Accounts Found

**AMOUNT DUE:** (Includes costs/fees and Interest to attachment date) **\$ 20,323.01**

(Per Idaho code § 31-3203 & § 28-22-104)

Signature: [Signature] U.S. Bank  
Sonja O. Date: 9/4/15

Address: U.S. BANK GARNISHMENT DEPT  
PO-OR-026N  
PO BOX 30869

Title: PORTLAND OR 97294  
PHONE 877-217-9468 FAX 503-401-4100 Phone Number: \_\_\_\_\_

**PLEASE REMIT WITHIN FIVE (5) DAYS**

Make checks payable to:

Bonner County Sheriff's Office

Attention: Civil Division

4001 N Boyer Rd

Sandpoint, ID 83864

83470415 NOTARY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER  
Notice and Interrogatory Sheriff's Office, Bonner County, Idaho

Ref # 1124891  
8/28/15, 2:43p

Case #: CV13-1045

Sheriff's Case #: C15-1331

Any and all account(s) of Defendant(s)  
Auto Alley  
% Mr. Calvin Visser & Ms. Vicki Visser  
31592 Hwy 200  
Ponderay, Idaho 83852

05996  
IN PERSON

Anita L. Pew

\$500

LeAnne Fleck

Civil Clerk

Bonner Co Sheriff

(208) 263-8417

TO: Wells Fargo Bank

**NOTICE:** YOU ARE HEREBY NOTIFIED, that all monies, goods, credits, effects, debts due or owing, shares of stock in any corporation or association, and all other personal property in your possession or under control of you, belonging to the Defendant (or to either of them), are ATTACHED OR LEVIED UPON pursuant to the attached Writ, and you are hereby notified not to pay over or transfer the same to anyone by myself, and you are hereby required to answer the following interrogatories.

You are required to make full and true answers, to the same under oath and filed in the cause within five (5) day thereafter. Should you fail to do so, the plaintiff may take judgment against you by default, or the court may, upon motion compel you to answer attachment.

Dated this 28th day of August, 2015.

Daryl Wheeler, Bonner County Sheriff

By C. LeAnne Fleck Civil Clerk**STATUTORY INTERROGATORIES:**

Q: At the time of service of the Notice and Interrogatory upon you, had you in your possession or under your control any property, money or effects of the within named defendants (or any of them?) If so, state what property, what money or effects, how much and what value.

Answer:

yes 7700- DDA- \$ 164.87**AMOUNT DUE:** (Includes costs/fees and Interest to attachment date) **\$ 20,323.01**

(Per Idaho code § 31-3203 &amp; § 28-22-104)

Signature: [Signature] Date: SEP 04 2015Address: WELLS FARGO BANKLEVY PROCESSINGTitle: Regina M Holguin Phone Number: MAC S3928-021Agent PO BOX 29779**PLEASE REMIT WITHIN FIVE (5) DAYS** PHOENIX, AZ 85038Make checks payable to: PHONE: 480-724-2000Bonner County Sheriff's Office FAX: 866-670-1561

Attention: Civil Division

4001 N Boyer Rd

Sandpoint, ID 83864

MT

027

## INDIVIDUAL ACKNOWLEDGMENT

State/Commonwealth of Arizona } ss.  
County of Maricopa }

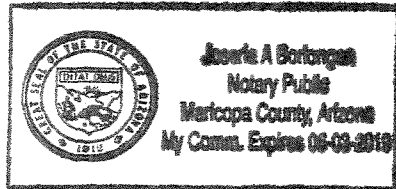
On this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before  
me, JESERIA BORLONGAN, the undersigned Notary  
Public, personally appeared Regina M Holguin  
Name(s) of Signer(s)

☒ personally known to me – OR –

☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same for the purposes therein stated.

WITNESS my hand and official seal.



Place Notary Seal and/or Any Stamp Above

Jeseria Borlongan  
Signature of Notary Public

Other Required Information (Printed Name of Notary, Residence, etc.)

### OPTIONAL

Although the information in this section is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

#### Description of Attached Document

Title or Type of Document: 83470415

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

Right Thumbprint  
of Signer

Top of thumb here

**WELLS FARGO BANK, N.A.**

PO Box 29779, MAC S3928-021  
Phoenix, AZ 85038

000787 CW92F5SA S3928-021

BONNER COUNTY SHERIFF'S OFFICE-CIVIL DIVISION  
4001 N BOYER RD  
SANDPOINT, ID 83864

September 3, 2015

CASHIER'S CHECK

PLEASE DETACH BEFORE DEPOSITING



**IDAHO SUPREME COURT**

CLERK OF THE COURTS  
(208) 334-2210



**IDAHO COURT OF APPEALS**

P.O. BOX 83728  
BOISE, ID 83720-0101

VALERIE LARSON  
COURT REPORTER  
P. O. BOX 788  
SPIRIT LAKE, ID 83869

STATE OF IDAHO )  
County of Bonner ) ss  
FILED Oct 21 2015  
AT 9:40 AM  
CLERK, DISTRICT COURT  
DMH

**ORDER GRANTING COURT REPORTER'S  
MOTION FOR EXTENSION OF TIME**

Docket No. 43432-2015 DOUGLAS VISSER v. Bonner County No. CV-2013-1045  
AUTO ALLEY, LLC

A Court Reporter's MOTION FOR EXTENSION OF TIME was filed with this Court on October 19, 2015, by Court Reporter VALERIE LARSON which requested an extension of time until Friday, November 13, 2015, to prepare and *lodge* the transcripts due in the above entitled appeal. Therefore,

IT HEREBY IS ORDERED that the Court Reporter's MOTION FOR EXTENSION OF TIME be, and hereby is, GRANTED and the transcripts shall be prepared and *lodged* with the District Court Clerk on or before FRIDAY, NOVEMBER 13, 2015, and the Reporter's Transcripts and Clerk's Record shall be filed with this Court by FRIDAY, DECEMBER 18, 2015.

DATED this 21 day of October, 2015.

For the Supreme Court

Stephen W. Kenyon  
Stephen W. Kenyon, Clerk

cc: Counsel of Record  
District Court Clerk  
Court Reporter Valerie Larson  
District Judge Barbara A. Buchanan

Entered on JSI  
By: kg

For the Court:  
Stephen W. Kenyon  
Clerk of the Courts

10/21/2015 KG

630

**CLERK OF THE COURTS**  
**(208) 334-2210**



IDAHO COURT OF APPEALS  
COUNTY OF BOYER  
P.O. BOX 83720  
BOISE, ID 83720-0101  
2015 NOV 19 AM 9 00

CLERK DISTRICT COURT  
DEPUTY *KC*

VALERIE LARSON  
COURT REPORTER  
P. O. BOX 788  
SPIRIT LAKE, ID 83869

## ORDER GRANTING COURT REPORTER'S SECOND MOTION FOR EXTENSION OF TIME

Docket No. 43432-2015      DOUGLAS VISSER v.      Bonner County No. CV-2013-1045  
AUTO ALLEY, LLC

A Court Reporter's MOTION FOR EXTENSION OF TIME was filed with this Court on November 17, 2015, by Court Reporter VALERIE LARSON which requested an extension of time to prepare and *lodge* the transcripts due in the above entitled appeal. Therefore,

IT HEREBY IS ORDERED that the Court Reporter's SECOND MOTION FOR EXTENSION OF TIME be, and hereby is, GRANTED and the transcripts shall be prepared and *lodged* with the District Court Clerk ON OR BEFORE TUESDAY, DECEMBER 15, 2015, and the REPORTER'S TRANSCRIPTS AND CLERK'S RECORD shall be filed with this Court by TUESDAY, JANUARY 19, 2016.

DATED this 18 day of November, 2015.

For the Supreme Court

Stephen W. Kenyon  
Stephen W. Kenyon, Clerk

cc: Counsel of Record  
District Court Clerk  
Court Reporter Valerie Larson  
District Judge Barbara A. Buchanan

Entered on JSI  
By: JSI

For the Court:  
Stephen W. Kenyon  
Clerk of the Courts

## 632

IN THE SUPREME COURT OF THE STATE OF IDAHO

DOUGLAS VISSER,

Plaintiff/ Respondent,

vs.

AUTO ALLEY, LLC., CALVIN VISSER  
and VICKI VISSER,

Defendant/ Appellants,

SUPREME COURT NO. 43432-2015  
BONNER COUNTY CV2013-1045

CLERK'S CERTIFICATE OF EXHIBITS

I, Michael W. Rosedale, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Bonner, do hereby certify that the following is offered as the Clerk's exhibit on appeal:

Exhibit List filed April 23, 2014

Exhibit List filed May 21, 2014

Plaintiff's Exhibit List filed May 28, 2015

Exhibit List filed May 28, 2015

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 7th day of January, 2016.

Michael W. Rosedale  
Clerk of the District Court

Kayla B.  
Deputy Clerk



Certificate of Exhibits

IN THE SUPREME COURT OF THE STATE OF IDAHO

DOUGLAS VISSER,

Plaintiff/Respondent,

vs.

AUTO ALLEY, LLC., CALVIN VISSER  
and VICKI VISSER,

Defendant/ Appellants,

SUPREME COURT NO. 43432-2015  
BONNER COUNTY CV2013-1045

CLERK'S CERTIFICATE  
OF SERVICE

I, Michael W. Rosedale, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Bonner, do hereby certify that I have personally served or mailed, by United Postal Service, one copy of the CLERK'S RECORD to each of the Attorneys of Record in this cause as follows:

BRENT FEATHERSTON  
ATTORNEY AT LAW  
113 S. SECOND AVENUE  
SANDPOINT, ID 83864

ATTORNEY FOR RESPONDENT

TOBY McLAUGHLIN  
ATTORNEY AT LAW  
414 CHURCH STREET, STE 203  
SANDPOINT, ID 83864

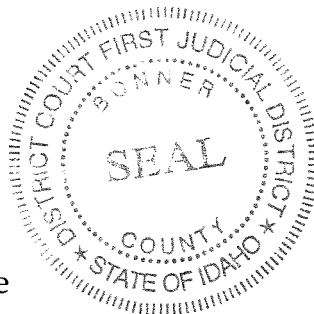
ATTORNEY FOR APPELLANT

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 7<sup>th</sup> day of January, 2016.

Michael W. Rosedale  
Clerk of the District Court

Kayla B.  
Deputy Clerk

Certificate of Service



## 632

IN THE SUPREME COURT OF THE STATE OF IDAHO

DOUGLAS VISSER,

Plaintiff/ Respondent,

vs.

AUTO ALLEY, LLC., CALVIN VISSER  
and VICKI VISSER,

Defendant/ Appellants,

SUPREME COURT NO. 43432-2015  
BONNER COUNTY CV2013-1045

CLERK'S CERTIFICATE OF EXHIBITS

I, Michael W. Rosedale, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Bonner, do hereby certify that the following is offered as the Clerk's exhibit on appeal:

Exhibit List filed April 23, 2014  
Exhibit List filed May 21, 2014  
Plaintiff's Exhibit List filed May 28, 2015  
Exhibit List filed May 28, 2015

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 2<sup>nd</sup> day of February, 2016.

Michael W. Rosedale  
Clerk of the District Court



Kayla B.  
Deputy Clerk

Certificate of Exhibits

IN THE SUPREME COURT OF THE STATE OF IDAHO

DOUGLAS VISSER,

Plaintiff/Respondent,

vs.

AUTO ALLEY, LLC., CALVIN VISSER  
and VICKI VISSER,

Defendant/ Appellants,

SUPREME COURT NO. 43432-2015  
BONNER COUNTY CV2013-1045

CLERK'S CERTIFICATE  
OF SERVICE

I, Michael W. Rosedale, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Bonner, do hereby certify that I have personally served or mailed, by United Postal Service, one copy of the CLERK'S RECORD to each of the Attorneys of Record in this cause as follows:

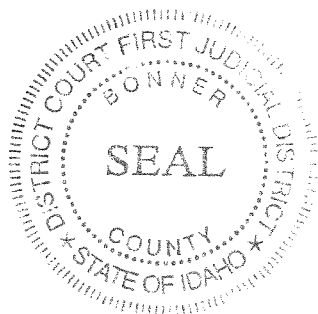
BRENT FEATHERSTON  
ATTORNEY AT LAW  
113 S. SECOND AVENUE  
SANDPOINT, ID 83864

ATTORNEY FOR RESPONDENT

TOBY McLAUGHLIN  
ATTORNEY AT LAW  
414 CHURCH STREET, STE 203  
SANDPOINT, ID 83864

ATTORNEY FOR APPELLANT

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 2nd day of February, 2016.



Certificate of Service

Michael W. Rosedale  
Clerk of the District Court

Kayla B.  
Deputy Clerk



TO: Clerk of the Court  
Bonner County Courthouse  
215 South First Avenue  
Sandpoint, Idaho 83864

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT  
CLERK OF DISTRICT COURT  
DEPUTY *KB*

CASE NO. CV 2013-1045

DOCKET NO. 43432

(DOUGLAS VISSER  
(  
(vs  
(  
(AUTO ALLEY, LLC

NOTICE OF TRANSCRIPTS LODGED

Notice is hereby given that on January 28, 2016, I lodged the transcripts from the proceedings held on April 23, 2014; May 21, 2014 and May 28 & 29, 2015, totaling 585 pages for the above-referenced case with the District Court Clerk of the County of Bonner in the First Judicial District.

*Valerie E. Larson*  
\_\_\_\_\_  
Valerie E. Larson  
January 28, 2016